



Pamela Colestock – Mayor
William Steele – Mayor Pro Tem
Suzanne Politza – Councilwoman
Stacey Robison – Council-at-Large
Ken Nicholas – Councilman

200 S. Main Street
Eaton Rapids, MI 48827
(517) 663-8118
Fax (517) 663-1116
www.cityofeatonrapids.com

Yvonne Ridge – City Manager
Laura Boomer – City Clerk
Larry Joe Weeks – Police Chief
Roger McNutt – Fire Chief
Marrie Jo Carr – Treasurer
LeRoy Hummel – Building Official
Rob Pierce – Public Works/Utilities Director
Randy Jewell – City Assessor
**Corey Cagle – Director of Parks,
Recreation & Events**

CITY OF EATON RAPIDS WORK SESSION AGENDA

October 24, 2022

5:00 p.m.

City Hall

200 S. Main Street

Public Comments

Unfinished and Special Business:

New Business

1. Parks, Recreation, and Events Update
2. Cemetery Ordinance Discussion
3. Fall Leaf Clean-up Discussion
4. Storm Clean-up Discussion
5. Teen Center Agreement Discussion
6. MERS Discussion
7. Dam Discussion
8. Contract Template Discussion
9. Audit Discussion

Public Comments

Adjourn



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**Corey Cagle – Director of Parks,
Recreation & Events**

MEETING DATE: MONDAY, OCTOBER 24, 2022

PARKS, RECREATION, & EVENTS DEPARTMENT

To: Mayor and City Council

☒ Work Session

From: Corey Cagle, Director of Parks, Recreation & Events

☐ Regular Meeting

Submitted: 10/18/22

Subject: 2022 Parks & Rec Recap

SUMMARY

The 2022 Parks & Recreation season is winding down. This is a recap of what we did this year!

STAFF RECOMMENDATION/MOTION

None.

LIST OF SUPPORTING DOCUMENTS

Parks & Rec Recap sheet

A group of people in kayaks on a river. The kayakers are wearing life jackets and are spread out across the river. The water is calm, and the background shows a line of trees under a clear blue sky.

A large group of approximately 30 people, including players and coaches, are posed for a group photo on a baseball field. They are arranged in several rows, with some players in the front row wearing uniforms. The background features a chain-link fence and trees under a clear blue sky.

-



A photograph of a parade float carrying a large crowd of people. The float is decorated with a large umbrella and a sign that reads "CITY OF CHICAGO". The float is moving along a street lined with trees, and a large crowd of people is visible in the background.



A blue cartoon donkey is sitting on a sidewalk. It is wearing a pink bikini bottom and a pink flower lei. The donkey has large ears and a friendly expression. A small black wheel is visible in the background.

A small, light-colored dog is standing on a paved surface, wearing a pink vest. In the background, there is a large, colorful inflatable structure with green and yellow sections, resembling a castle or a playhouse, set up on a grassy area.



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MEETING DATE: 10/19/2022

CITY MANAGER

To: Mayor and City Council
From: Yvonne Ridge, City Manager
Submitted: 10/19/2022
Subject: Cemetery Discussion

☐ Work Session

☒ Regular Meeting

SUMMARY

Begin discussion to create Cemetery Rules/Regulations and review Fees.

STAFF RECOMMENDATION/MOTION

Discussion

LIST OF SUPPORTING DOCUMENTS

Eaton Rapids Cemetery Fees
Hamlin Township Fees
Hamlin Township Cemetery Rules/Regulations
City of Eaton Rapids Cemetery Ordinance – Chapter 8

Eaton Rapids – Cemetery Fees

Purchase of Burial Lot

- Resident/Taxpayer: \$500.00
- Non-Resident: \$700.00

Grave Opening/Closing

- Weekdays: \$500.00 (After 3pm: \$550.00)
- Weekends: \$550.00
- Holidays: \$650.00
- Babyland including lot: \$100.00
- Baby on Parents Lot: \$50.00

Ashes

- Weekdays: \$250.00 (After 3pm: \$300.00)
- Weekends: \$300.00
- Holidays: \$450.00

Mausoleum

- Weekdays: \$50.00
- Saturday: \$75.00
- Sunday & Holidays: \$150.00

Miscellaneous Fees:

- Foundations are .50 cents per square inch with a \$70.00 minimum.

The City Council establishes the fees for cemetery-related items. Periodically, these fees are reviewed and may be subject to change without notice.

HAMLIN TOWNSHIP CEMETERY

Peaceful Oakwood Cemetery was established in the late 1800s and is located on Spicerville Road. The Cemetery is open from dawn to dusk every day. Burial spaces are available to residents and non-residents.

Purchase of burial space:

- Resident of Hamlin Township: \$200.00
- Non-resident: \$600.00

Opening/Closing Fees:

- Full Burial: \$700.00
- Cremains: \$250.00

Foundations are required for all memorial markers. Please contact the Clerk for current pricing.

OAKWOOD CEMETERY HAMLIN TOWNSHIP

RULES AND REGULATIONS In accordance with Ordinance 1997-02

GOAL: It is the goal of the Hamlin Township Board to maintain the cemetery as a quiet, beautiful resting place for the deceased. There is no attempt to interfere with individual tastes. Rather, these Rules and Regulations are set forth for the benefit and protection of all.

OWNERSHIP AND MANAGEMENT

The Oakwood Cemetery is owned and operated by Hamlin Township, Eaton County, Michigan, and is maintained by the employees of the Township or by independent contractors retained by the township board.

Hamlin Township is in no way responsible for damage or loss to any lot, including markers, monuments, urns or grave decorations.

GENERAL INFORMATION

- The cemetery is under the direction of the township board. The cemetery office is located at the Hamlin Township Office, 6463 S. Clinton Trail, Eaton Rapids, Michigan 48827. Office hours at the township are Monday, Wednesday and Friday 9:00 a.m. to 4:00 p.m., except on holidays. A complete system of ownership and burial records is maintained by the Township Clerk and is located at the township office. All information concerning the Cemetery, including records, purchasing procedures, rules and regulations, arrangements for and cost of interment services, perpetual care, and other services may be obtained at the township office.
- Cemetery Records – The township clerk maintains records that include the following information: Lot purchaser, name of deceased, date of death, date of interment, place of death, and funeral home.

DEFINITIONS

BURIAL SPACE. A “burial space” shall consist of a land area of four feet wide by ten feet in length (4’w x 10’l).

CEMETERY LOT. A “cemetery lot” shall consist of burial space sufficient to accommodate from one to four burial spaces.

RULES AND REGULATIONS

General Rules

1. No entrance into the cemetery is to be gained except through established roadways and only during established times. The cemetery is open from dawn until dusk.
2. The speed limit within the cemetery is 10 miles per hour.
3. Driving off the established roadways within the cemetery is prohibited.
4. Alcoholic beverages are not permitted in the cemetery, except in conjunction with established burial customs.
5. Dogs are allowed in the cemetery, however, proper care and clean up must be maintained.
6. Advertising or posting of signs within the cemetery is prohibited.
7. The carrying or use of firearms within the cemetery is prohibited except in connection with burial ceremonies or by a duly authorized police officer.
8. The use of profane, loud, boisterous language is prohibited.
9. Refuse or debris of any kind or nature including, but not limited to, dried flowers, wreaths, papers and flower containers must be removed or deposited in containers located within the cemetery.
10. Winter grave decorations such as wreaths and grave blankets are permitted beginning November 1st and must be removed by April 1st.

LOT PURCHASING & TRANSFERS

1. All such spaces and lots shall be identified and sold by Section, Block and Number as shown on the Hamlin Township Cemetery Plot Map.
2. Cost to a township resident for a burial space is \$200.00 each.
Cost to a non-resident for a burial space is \$600.00 each.
3. Every burial space is sold subject to the rules and regulations now in force or that may be hereinafter adopted and to such changes of the present rules as deemed necessary by the Township Board.
4. Upon purchase of a burial space, the owner will be issued a cemetery lot certificate, which entitles the owner and their heirs to burial rights for human remains.
5. Burial space shall not be purchased for speculative purposes or for resale to third parties not defined as immediate family members.
6. If a person has purchased a burial space as a non-resident and then becomes a resident of Hamlin Township, no refund of the purchase price will be made.
7. All transfers of burial rights shall be made through the township clerk at the township office. Burial space ownership may be transferred to children and grandchildren without charge.
8. Burial rights may revert back to the township of any cemetery plot, lot or burial space which shall remain unused for a period of forty (40) years. All reasonable attempts will be made to locate heirs before this transaction takes place.

INTERMENTS AND DISINTERMENTS

Instructions for ordering grave openings have been given to area funeral directors. If your funeral director does not have these instructions, contact the township clerk or the township office for instructions. Generally, orders must be received at least 48 hours in

advance of the funeral services. Below is a listing of rules that the burial space owner and funeral director should be aware of:

1. Cost for a grave opening is \$600.00 from April 15 – October 15. Cost for a grave opening from October 16 – April 14 is \$700.00. The cost for a cremains opening is \$200.00. Oversize vaults may incur an additional cost. The difference in cost is due to the labor involved.
2. No burial shall take place unless lot purchase price, the cost of any services required to open or close the plot, and all other fees and charges have been satisfied in full.
3. Orders from funeral directors shall be construed as orders from owners.
4. A copy of the burial permit shall be required for all burials including cremains. Burial permits for cremains should include complete information as required on regular burial permits in order for the township clerk to keep complete records.
5. All burials shall be that of the lot owner or his/her immediate family. All other burials shall be subject to provisions outlined under Lot Purchasing & Transfers, Item 8.
6. No burials shall be allowed for other than human remains.
7. The cemetery sexton will assist with funeral processions.
8. All interments shall be performed by the cemetery sexton.
9. Disinterments or transfers are handled by the Health Department.
10. Graves cannot be opened for inspection except under court order.
11. The Cemetery sexton will remove funeral designs and floral pieces as soon as they become unsightly, and shall assume no responsibility for their return.

MARKERS OR MEMORIALS

The footing or foundation upon which any monument, marker or memorial must be placed shall be built of concrete and all bases shall be level and extend at least 4 inches beyond the width and length of all markers and monuments and shall be no more than 24 inches wide and no more than 48 inches long. Said footing or foundation shall be constructed by the Township at a cost to the owner of the burial right. Contact the Clerk for the current rate.

1. All monuments and markers are to be constructed of durable granite or cut stone or other equally durable composition. Other materials such as wood, plastic, cement or steel are not permissible.
2. Inscriptions on markers and monuments must not be offensive or improper as judged by the township board. The owner of said monument or marker shall be responsible for all expenses for removal of same upon due notice.
3. All monuments and markers must have foundations and shall not be delivered to lots until foundations have been installed and paid for. Foundations will not be poured during the winter months.
4. Monument companies are responsible for all damages to cemetery grounds and surrounding monuments and markers occurring during their installation.
5. The township assumes no responsibility for damages to markers or monuments.

LOT CARE, MAINTENANCE AND IMPROVEMENTS

The Township Board shall have the right and authority to remove and dispose of any and all growth, emblems, displays or containers or other items prohibited by this article

without notice. The grounds that include and surround a burial space must comply with all of the following requirements:

1. Flowers, plants, and artificial wreaths are not to be placed further than 12 inches (12") from the front of the foundation. Shrubs, bushes and trees are prohibited.
2. Urns or small statutes are to be placed in line with the foundation, and are not to be wider than the foundation.
3. Boxes, shells, toys, metal designs, glass jars or bottles, ornaments, vases, dolls or other man-made objects are prohibited.
4. The placing of stone, limestone, woodchips, etc. anywhere within the cemetery lots is prohibited.
5. Half moon stones may be placed with prior approval from the township board, BUT must be removed by October 31st of each year.
6. Fences, curbing, steps, benches, arbors, or any structure made of wood are prohibited.
7. Shepherd hooks are permitted for the purpose of hanging baskets only.
8. Permission must be obtained from the township board before placing urns. Urns must be of durable construction and placed in line with marker or headstones.
9. The township board reserves the right to remove and dispose of any unsightly, deteriorated, neglected, or prohibited items except monuments or markers without notice to the owner.

EFFECTIVE DATE

These Rules and Regulations relating to Oakwood Cemetery Ordinance 1997-02 for Hamlin Township, Eaton County, Michigan, have been approved and are effective 4/1/2013.

Sec. 8-1. Definitions.

[The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Burial space shall mean a lot or portion of lot in any cemetery designated and maintained for the interment of a human body or bodies and for no other purpose.

City cemetery shall mean Rose Hill Cemetery as heretofore established, and any other public cemetery owned, managed or controlled by the city.

Flush refers to a grave stone or marker that is placed in such a way as to be even or flush to ground cover for ease of mowing.

Foundation is when concrete is placed or poured into the ground to serve as a base for a monument, grave stone or other grave marker.

Grave stone is also known as a headstone or marker gravestone typically depict the names of one (1) or two (2) persons buried in that location. Gravestones are placed before or after a burial at the head or foot of a grave site or sites.

Internment is the act of burying a casket or cremains.

Monument is sometimes known as a family monument or a large stone marker typically located in the center of the plat which depicts a family name.

Open and close is the act of opening the grave site and backfilling after burial service.

Owner shall mean any person owning or possessing the privilege, license or right of interment in any burial space.

Plot shall mean an area containing four (4) or eight (8) individual grave sites.

Raised is any monument or grave stone that is above grade or ground level.

Section shall mean a defined area of the cemetery where multiple plots and grave sites are.

Sexton is the person in charge of cemetery operations including lot sales, burials, maintenance and record keeping.

Temporary marker is a small plaque placed by the sexton or funeral director on a recent burial site. Temporary markers are removed once a permanent grave stone is placed.

Urn is a metal, concrete or porcelain container placed at a grave site either temporary or permanent to have fresh or potted plants or flowers.

Vault shall also be known as a "rough box" which is a concrete structure placed in the ground into which a casket is placed.

(Code 1966, § 3.21; Ord. No. 2015-14, 6-8-15)

Sec. 8-2. City cemeteries to be managed by the city council.

The cemeteries which have been or may hereafter be established by the city and maintained either within or without its limits, of which plats have been or shall be filed in the office of the city clerk, shall be under the management, supervision and care of the city council.

(Code 1966, § 3.22)

Sec. 8-3. Duties and powers of city council in respect to cemeteries.

The city council shall have the following powers and duties in respect to the management of the city cemeteries:

- (a) It shall, if necessary, cause the city cemeteries to be laid out in lots, drives and walks; the lots to be numbered, drives and walks to be named, and plats to be made.
- (b) It shall fix the price of lots and other services necessary thereto.
- (c) It shall see that this chapter and all rules and regulations in respect to cemeteries are strictly enforced.
- (d) It shall have the power to appoint a cemetery sexton.

(Code 1966, §§ 3.22, 3.23)

Sec. 8-4. Duties of cemetery sexton.

The cemetery sexton shall, subject to the supervision of the city manager, be responsible for the care, maintenance and record keeping of the city cemetery and all interments and disinterments in the city cemetery.

(Ord. No. 2015-14, 6-8-15)

Sec. 8-5. Permit for interment required.

No interment shall be made in the city cemetery nor in any vault therein, until the proper information as required by law shall have first been furnished to the city clerk and a permit has been issued in writing.

(Code 1966, §§ 3.25, 3.46)

State law reference(s)—Burial permits, M.S.A., § 14.226.

Sec. 8-6. City clerk to keep register of interments; contents.

The city clerk shall keep a register of all interments made in any city cemetery in which shall appear the name of the deceased, the date and place of interment and such other information as may be required.

(Code 1966, § 3.23)

Sec. 8-7. Work to be performed by city employees under direction of cemetery sexton.

No person other than the cemetery sexton or a city employee acting under his direct supervision shall dig, grade or fill in a burial space or otherwise do any work in connection therewith.

(Code 1966, §§ 3.25, 3.27)

Sec. 8-8. Permission required for disinterments; work to be performed by cemetery authorities; fee.

No disinterment or other opening of a grave shall be allowed without the permission of the city council, and upon the written order of the owner of the lot, and in any case shall only be made by the cemetery authorities, upon the payment of the charge provided by resolution of the city council.

(Code 1966, § 3.47)

Sec. 8-9. Work performed in city cemetery to be under supervision of cemetery sexton.

- (a) The planting or training of trees, shrubbery, bushes, flowers, bulbs, lawn covering or any type of planting upon lots in the city cemetery shall be under the supervision of the cemetery sexton.
- (b) All workmen employed in the erection of vaults, tombstones, monuments and markers shall be subject to the control and direction of the cemetery sexton and all material brought into the city cemetery to be used in improving lots must be brought in in such a manner and at such a time as the cemetery sexton may direct; and all earth and rubbish accumulated in improving lots must be removed and deposited under the direction of the cemetery sexton and at the expense of the proprietor of the lot.

(Code 1966, §§ 3.41, 3.43)

Sec. 8-10. Monuments: Restrictions; under direction of city council; permission required for removal.

Except as otherwise provided in this chapter, not more than one (1) monument, gravestone or marker exceeding two (2) feet in height above the surface of the ground will be permitted in each family lot in the city cemetery, and the foundations for all monuments to be erected in the cemetery shall be constructed under the supervision and direction of the cemetery sexton. The expense of the construction shall be paid by the lot owner. No monument shall be removed from the cemetery without the consent of the cemetery sexton.

(Code 1966, § 3.42)

Sec. 8-11. Restrictions on monuments and planting in certain sections.

No markers, monuments, posts or headstones, other than those placed flush with the ground in such a manner as not to obstruct the free passage of mowing and maintenance equipment, shall be allowed in sections J, L, and Q of the Rose Hill Cemetery, and no planting, other than that prescribed on the maps and sketches of said cemetery now on file with the city clerk, shall be allowed in sections J, L, and Q.

(Code 1966, § 3.40; Ord. No. 2002-11, 11-11-02; Ord. No. 2005-15, 11-28-05)

Sec. 8-12. Monuments prohibited on single grave sites.

No monuments or tombstones shall be permitted on single grave sites.

(Code 1966, § 3.50)

Sec. 8-13. Permission required for placing monuments or planting.

No fence, railing, coping, wall, hedge, tree, shrub, monument, headstone, post or marker shall be placed in or erected around or upon any lot or lots in the city cemetery, nor shall any planting, grading or sodding be done without first obtaining the permission of the cemetery sexton.

(Code 1966, § 3.40)

Sec. 8-14. Working hours.

No stone work shall be brought into the city cemetery on Friday of any week after 12:00 noon, and no work shall be commenced on any day that cannot be finished by the following Friday.

(Code 1966, § 3.44)

Sec. 8-15. Permission required for removal of plants.

No plants, planting, trees, shrubs, bushes or flowers shall be removed from any city cemetery lot without the consent of the lot owner and the cemetery sexton.

(Code 1966, § 3.48)

Secs. 8-16—8-25. Reserved.

ARTICLE II. LOT OWNERS

Sec. 8-26. Sale of lots.

Any person desiring to purchase a burial space in any city cemetery shall make application and pay the required amount for the lot selected to the city clerk. Upon the purchase of any burial space, the city clerk shall prepare and deliver to the purchaser a duly executed deed for said burial space. The deed shall be executed on behalf of the city by the mayor and the city clerk and shall convey to the purchaser the right of interment only, and shall be held subject to the provisions of this chapter and such ordinances as may hereafter be adopted by the city council.

(Code 1966, § 3.24)

Sec. 8-27. Purchase of single graves.

Single graves in localities fixed by the city council may be purchased at a price fixed by resolution of the city council.

(Code 1966, § 3.50)

Sec. 8-28. Record of deeds to lots.

The city clerk shall keep proper records in which the deeds to all burial spaces shall be recorded at length. In connection with all such records, the city clerk shall also keep a general index in which shall be noted alphabetically the name of the parties to every such instrument of conveyance.

(Code 1966, § 3.26)

Sec. 8-29. Burials limited to owner of lot or his relatives.

All interments on lots in the city cemetery are restricted to the members of the family and relatives of the owner of the lot.

(Code 1966, § 3.25)

Sec. 8-30. Proceeds from sales to be placed in cemetery funds; investment requirements.

The city council will set the rate by council resolution of the monies received from the sale of each lot in the city cemetery which shall be placed in the fund known as the perpetual care and maintenance fund of Rose Hill Cemetery. The fund shall be at all times invested in accordance with the laws governing public funds in the state and the proceeds therefrom may be used in the general care and maintenance of the cemetery. The remainder of the purchase price shall be placed in the cemetery operating fund.

(Code 1966, § 3.29; Ord. No. 2018-1, 4-2-18)

State law reference(s)—Authority of city to provide perpetual care and maintenance for cemetery lots, M.S.A., § 5.3165.

Sec. 8-31. When rescission of lot purchase is permitted.

Any owner of a cemetery lot in the city cemetery, no part of which has been used for a burial, may rescind his purchase at any time within one (1) year from the date of the purchase, and the city clerk shall, upon execution of a proper reconveyance and release, refund to the owner the purchase price paid by the owner in full.

(Code 1966, § 3.31)

Sec. 8-32. Assignment of lots restricted.

No owner of a cemetery lot in the city cemetery shall transfer, assign or sell his cemetery lot or lots to a nonresident until the expiration of one (1) year from the date of purchase.

(Code 1966, § 3.32)

Sec. 8-33. Record of assignments; notice.

For purposes of maintaining an accurate, up-to-date record of all burial rights in the city cemetery, no transfer, sale or assignment of any lot will be valid unless notification is given to the city clerk, within ten (10) days of the sale, transfer or assignment; said notice to include the date of the transaction and the name and address of the purchaser, transferee or assignee.

(Code 1966, § 3.33)

Sec. 8-34. Labor charges.

The city clerk shall charge and collect from the owner of lots, on behalf of the city, such fees for work performed in the city cemetery as may be from time to time fixed by the city council. All such fees shall be paid to the city clerk or his agent.

(Code 1966, § 3.27)

Secs. 8-35—8-44. Reserved.

ARTICLE III. CONDUCT IN CITY CEMETERY

Sec. 8-45. Entering cemetery; hours.

The city cemetery shall be open to the public each day from 8:00 a.m. until 9:00 p.m. No person shall enter, idle, loiter or congregate in or on the city cemetery between the hours of 9:00 p.m. and 8:00 a.m.; at which time, the city cemetery shall officially be closed.

(Code 1966, § 3.51; Ord. No. 1989-4, 10-10-89)

Sec. 8-46. Lot owners subject to same restrictions as visitors.

Lot owners and their families shall be allowed access to the city cemetery grounds at all proper times but must observe all of the provisions of this Code and other rules which may be adopted for the regulation of visitors.

(Code 1966, § 3.51)

Sec. 8-47. Trespass and injuring shrubs prohibited.

No person shall trespass on any lot or burial space within any city cemetery nor pick or cut flowers or shrubs except on his own lot, or cut down, injure or disturb any tree or shrub or otherwise commit any desecration within any city cemetery.

(Code 1966, § 3.28)

Sec. 8-48. Refreshments prohibited.

No person with refreshments or liquors will be admitted to the city cemetery.

(Code 1966, § 3.51)

Sec. 8-49. Animals prohibited.

No person shall allow any domestic animal on city cemetery grounds with exception for service dogs.

(Code 1966, § 3.51; Ord. No. 2004-11, 3-22-04; Ord. No. 2015-14, 6-8-15)

Sec. 8-50. Disorderliness prohibited.

No person shall use boisterous or profane language or in any way disturb the quiet and good order of the city cemetery.

(Code 1966, § 3.51)

Sec. 8-51. Speed limit; driving on grass prohibited.

No vehicle shall be driven in excess of a speed of fifteen (15) miles per hour and driving upon the grass of any planted portion of the city cemetery is prohibited.

(Code 1966, § 3.51)

Sec. 8-52. Heavy trucking prohibited.

No heavy trucking, teaming or vehicular traffic shall be allowed in the city cemetery at any time except when necessary for the maintenance of the cemetery or for lawful burials therein.

(Code 1966, § 3.44)

Sec. 8-53. Discharging firearms prohibited; exception.

Discharging of firearms, other than volleys at burial services, is prohibited in the city cemetery and on such occasion persons with firearms will not be admitted to the grounds except as expressly authorized to participate in such type of service.

(Code 1966, § 3.51)

Sec. 8-54. Walking on lots prohibited.

All persons are forbidden to sit, unnecessarily walk upon or otherwise trespass upon any lot in the city cemetery not his own.

(Code 1966, § 3.51; Ord. No. 2004-12, 3-22-04; Ord. No. 2015-14, 6-8-15)

Sec. 8-55. Bicycles and other small vehicles.

Bicycle riders and persons in charge of small vehicles, such as baby cabs, must confine themselves to the avenues of the city cemetery and not ride upon or pass over lots, burial places or sections and must observe generally the rules governing other vehicles and drivers of vehicles.

(Code 1966, § 3.51; Ord. No. 2004-13, 3-22-04; Ord. No. 2015-14, 6-8-15)

Cross reference(s)—Bicycles, skateboards, scooters, Ch. 6.

Sec. 8-56. Funeral processions.

All funeral processions while in the grounds of the city cemetery shall be subject to the direction and control of the cemetery sexton. All motor vehicles, carriages and other vehicular traffic shall keep to the right on the avenues. The speed limit for traffic entering and leaving the city cemetery during processions is fixed at fifteen (15) miles per hour.

(Code 1966, § 3.49)

Sec. 8-57. Penalties defined.

Any person who violates this section refer to section 1-8.

(Ord. No. 2015-14, 6-8-15)



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MEETING DATE: 10/19/2022

CITY MANAGER

To: Mayor and City Council ☒ Work Session
From: Yvonne Ridge, City Manager & Cullen Harkness, City Attorney ☐ Regular Meeting
Submitted: 10/12/2022
Subject: Service Agreement – Teen Center

SUMMARY

I had a phone meeting with Gary Wichman on Wednesday, October 19 to discuss the Teen Center Service Agreement. Mr. Wichman would like Council to consider a three (3) year commitment to the service agreement. Mr. Wichman will be taking the agreement to the Teen Center Board for approval at their next meeting.

The City has been applying an annual \$6,000 Electric Utility Credit to the Teen Center, however, this was not included in the 2022-2023 budget.

STAFF RECOMMENDATION/MOTION

Provide feedback regarding the request of a three (3) year agreement and a Budget Amendment for the \$6,000 for the 2022-2023 budget.

LIST OF SUPPORTING DOCUMENTS

Service Agreement

SERVICE AGREEMENT

This Service Agreement (Agreement”) is made on _____, _____, by and between the **CITY OF EATON RAPIDS** (“City”), a Michigan municipal corporation, whose address is 200 S. Main St., Eaton Rapids, MI 48827, and **EATON RAPIDS COMMUNITY ALLIANCE, INC** (“ERCA”), a Michigan non-profit corporation, whose address is P.O. Box 215, Eaton Rapids, MI 48827, collectively referred to as the “Parties”.

For valid consideration given and received, the parties agree as follows:

- I. *Term.* This Agreement shall commence on _____ (“Effective Date”) and shall continue until _____ (“Termination Date”).
- II. *Consideration.* The Parties agree that the City shall provide an annual utility credit in the amount of six thousand (\$6,000.00) dollars and zero cents for ERCA’s services as specified in this Agreement. ERCA shall be responsible for any and all utility charges in excess of the annual credit provided. The parties herein agree that this utility credit is an appropriation as contemplated by Act 179 of 1967, Youth Centers, MCL 123.461.
- III. *Services.* ERCA shall provide the following services for the City for the duration of this Agreement, specifically tailored for youth under the age of twenty-one (21):
 - a. Provide a location for art and other educational classes to be held for Eaton Rapids area youth and storage of materials for said classes;
 - b. Provide programming that promotes a healthy and active lifestyle for Eaton Rapids area youth including, but not limited to: teen mental health; and
 - c. Provide recreational activities and services for Eaton Rapids area youth.
- IV. *Annual Report:* ERCA shall provide an annual report to the City of services provided under this agreement including expenditures related thereto.
- V. *Right to Subcontract.* ERCA shall have the right to subcontract with other organizations and/or program providers to provide additional programs and services under this Agreement for the benefit of the youth of the City.
- VI. *Insurance.* For the duration of this Agreement, ERCA shall maintain a general liability insurance policy naming the City as an additional insured under said policy. ERCA shall provide proof of said insurance policy prior to the Effective Date.
- VII. *Termination.* Either party may terminate this Agreement by giving 30-day notice to the other party. The party exercising their termination rights under this section shall provide notice to the other party in writing. In the event this agreement is terminated prior to the end of the term, any utility credits for the year of termination shall be prorated through the termination date.
- VIII. *Non-Discrimination.* ERCA shall not discriminate against any qualified employee or qualified applicant for employment because of race, color, religion, age, gender, gender identity, weight, marital status, familial status, creed, national origin, ancestry, handicap, or sexual orientation. ERCA shall include an identical non-discrimination provision in any subcontracts entered into pursuant to Section V of this Agreement.
- IX. *Severability.* If any part of this Agreement is determined to be invalid, the rest of the agreement remains in full effect.

- X. *No Oral Modification.* This Agreement may not be modified orally. This Agreement may only be modified through a written agreement signed by both parties.
- XI. *Applicable Law.* Any and all disputes regarding the terms of this Agreement shall be determined exclusively under Michigan law. Any and all disputes arising out of this agreement shall be brought exclusively in the courts for Eaton County, MI.
- XII. *Entire Agreement.* This Agreement constitutes the entire agreement and understandings between the parties and supersedes all other agreements and understandings, both written and oral, of the parties relating to the subject matter of this Agreement.

Pamela Colestock, Mayor
City of Eaton Rapids

Date

Laura Boomer, Clerk
City of Albion

Date

_____, on behalf
of Eaton Rapids Community
Alliance, Inc.

Date

As to Form Only:

Cullen Harkness, City Attorney
City of Eaton Rapids

Date



Pamela Colestock – Mayor
William Steele – Mayor Pro Tem
Suzanne Politza – Councilwoman
Stacey Robison – Council-at-Large
Ken Nicholas – Councilman

200 S. Main Street
Eaton Rapids, MI 48827
(517) 663-8118
Fax (517) 663-1116
www.cityofeatonrapids.com

Yvonne Ridge – City Manager
Laura Boomer – City Clerk
Larry Joe Weeks – Police Chief
Roger McNutt – Fire Chief
Marrie Jo Carr – Treasurer
LeRoy Hummel – Building Official
Rob Pierce – Public Works/Utilities Director
Randy Jewell – City Assessor
**Corey Cagle – Director of Parks,
Recreation & Events**

MEETING DATE: 10/19/2022

CITY MANAGER

To: Mayor and City Council
From: Yvonne Ridge, City Manager
Submitted: 10/19/2022
Subject: MERS Discussion

☒ Work Session

☐ Regular Meeting

SUMMARY

Surplus Addendum

- The Surplus division is used to help the overall funding level of your DB plan while not reducing your required contributions. Currently when you make additional contributions even if your rates are not recalculated automatically the additional contributions are reflected in the next years valuation. The additional contributions work in the annual valuation to reduce your required contribution which slows down the rate at which the plan is funded. If you make additional contributions into the Surplus division the assets will be reflected in your overall funding level but not at a division level which would reduce your required contributions. Since the required contributions are not reduced you are funding your plan at a faster pace than you would without the Surplus division.
- The Surplus division does not have any requirements or reporting frequency commitments, it is simply just there for when you have additional contributions. If you ever do need the funds to reduce required contributions all you would do is, ask MERS to move the assets from the Surplus division into the desired division. If you would like to move forward with setting up a Surplus Division, please complete/Review the highlighted portions and return to me for processing at your earliest convenience. The Surplus division does not require Council approval.

Defined Contribution Plan

- DC Resolution
 - This is the document for Council to adopt the DC plan.
- DC Adoption Agreement
 - This is the DC Adoption Agreement which lays out the provisions (benefits) in the plan.
- Compensation Addendum
 - If you elect a customer definition of compensation in the DC plan, please use this form to define the included wages. If you elect a default wage listed on the DC agreement this is not needed.
- DC Loan Addendum
 - If you decide to allow loans in the DC plan this Addendum outlines the administration of loans. If you do not allow loans in the DC plan this is not needed.

- DC Employer Contribution
 - Admin Employees
 - To elect 8% Employer contribution into the DC plan

Current Plan 457

The Defined Benefit and Hybrid Plans the City offers to eligible employees hired prior to 2019 are qualified plans. This provides employees the opportunity to participate in a pension plan as well as the ability to invest in a 401K or 457 Plan.

The current 457 plan the city offers to new employees is not a qualified retirement plan. This places contribution limits on employees hired after 2019. The employee must consider the employer and employee share of the contribution towards the limits of the 457 plan. In addition, there is no vesting requirement with the 457 plan for the employer share of the contribution. A qualified plan has set vesting requirements for the employer share of the contribution. If an employee works less than the required vesting, the employee would not be entitled to the employer share of the contribution.

Offering employees, a qualified plan does not change the amount the city contributes, it provides opportunity for employees to contribute more towards retirement and sets guidelines for a qualified plan.

STAFF RECOMMENDATION/MOTION

Discussion and direction.

LIST OF SUPPORTING DOCUMENTS

DB Surplus Division Addendum
DC Resolution
DC Agreement
DC Compensation Addendum
DC Employer Contribution

Defined Benefit Plan Surplus Division Adoption Addendum



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The Municipal Employees' Retirement System of Michigan ("MERS")

and _____, # _____
(Municipality name) (Municipality number)

entered into an Adoption Agreement effective _____; and
(Month, Year)

Employer may elect to remit Contributions to its reserve account with MERS in excess of the annual required Employer Contributions as determined by MERS' actuary, or in excess of the amount currently due from Employer, without such amounts being immediately attributable to the reserve of its employee divisions ("Surplus Contributions"). MERS has advised Employer that in order to accomplish this, MERS must establish a Surplus Division to account such Surplus Contributions.

To establish the Surplus Division(s) and memorialize the terms and conditions agreed to by MERS and Employer concerning their establishment, Employer and MERS hereby enter into this Surplus Contribution Addendum to Employer's Adoption Agreement ("Addendum"), to be effective as of the date set out above.

I MERS Establishment of Surplus Division: Commencing on the effective date of this Addendum, MERS shall establish the following Surplus Division(s) for Employer:

☐ **Associated Surplus Divisions:**

	To be completed by MERS		List DB division number(s)
a) Surplus Division	_____	to be associated with	_____.
b) Surplus Division	_____	to be associated with	_____.
c) Surplus Division	_____	to be associated with	_____.

☐ **Unassociated Surplus Divisions:**

	To be completed by MERS	
d) Surplus Division	_____	to be unassociated with any Employee Division.
e) Surplus Division	_____	to be unassociated with any Employee Division.
f) Surplus Division	_____	to be unassociated with any Employee Division.

II Employer Remittance of Surplus Contributions: At Employer's sole and exclusive discretion (which shall include Employer's obligations under terms agreed to by Employer in the course of collective bargaining, if any), Employer may remit contributions to MERS that Employer expressly designates as Surplus Contributions, specifying the appropriate Surplus Division to which they are to be credited. It is understood by Employer that, once remitted to MERS, Surplus Contributions are not and shall never be refundable to Employer, nor used for any purpose other than the funding of its obligations for MERS benefits accrued by employees of Employer.

Defined Benefit Plan Surplus Division Adoption Addendum

- III MERS' Crediting of Surplus Contributions:** Upon receipt from Employer of Employer Contributions designated as Surplus Contributions, MERS shall credit such amounts to the Surplus Division designated by Employer.
- IV Treatment of Surplus Contributions for Actuarial Purposes:** Surplus Contributions reflected in one or more Surplus Division established by MERS as directed by Employer shall be treated as follows for actuarial purposes:
- a) They shall not be included in the determination of the annual Employer Contributions requirement for any Employee Division, and
 - b) They shall be included in the determination of the Employer's overall funded status.
- V Employer Use of Surplus Contributions:** At any time, upon 30 days' advance written notice to MERS, Employer may direct MERS to use the Surplus Contributions currently reflected in one or more established Surplus Division(s) be used by Employer as follows:
- a) Employer may transfer Surplus Contributions reflected in an Unassociated Surplus Division to one or more Employee Division(s).
 - b) Employer may transfer Surplus Contributions reflected in an Assigned Surplus Division to such Employee Division.
 - c) Employer may redesignate any Surplus Division (whether Associated or Unassociated) to either an Associated Surplus Division or to an Unassociated Surplus Division, as applicable.
- Employer is solely responsible for any decision(s) it makes under Section V, and Employer agrees that by entering into this Addendum, it shall indemnify and hold MERS harmless from any claim, challenge, or litigation arising from its actions under Section V, including costs and attorneys' fees.
- Once Surplus Contributions are transferred to an Employee Division, they may not thereafter be recharacterized as Surplus Contributions or transferred back to a Surplus Division.
- VI Recharacterization of Contributions:** By written notice to MERS, Employer may make a one-time election to transfer Employer Contributions it remitted prior to the effective date of this Addendum that were in excess of the amount then due from Employer from an Employer Division to one or more Surplus Division(s) established by this Addendum, and recharacterize those amounts as Surplus Contributions. Employer may make the election described herein only once.
- VII Rights of MERS:** At any time following the occurrence of any or all of the following, MERS reserves the right to transfer some or all of the Surplus Contributions reflected in an Employer's Reserves to one or more Employee Division(s) of such Employer:
- a) Employer has defaulted on some or all of its contribution obligations to MERS.
 - b) Employer has filed for or is otherwise subject to bankruptcy protection or receivership.
 - c) An emergency manager or similar oversight authority has been appointed to conduct Employer's financial affairs.

Defined Benefit Plan Surplus Division Adoption Addendum

VIII Continuation of Adoption Agreement: Except for the terms and conditions of this Addendum, all other terms and conditions of the Adoption Agreement, as it may be or may have been amended from time to time, shall continue unchanged.

IN WITNESS WHEREOF, this Addendum is entered into by MERS and Employer by signature of the authorized parties below:

Employer Approving Authority

Signature: _____ on _____
(Name of approving representative) (Date)

Employer Printed Name: _____

Employer Title: _____

MERS Approving Authority

Signature: _____ on _____
(Date)

MERS Printed Name: _____

MERS Title: _____

Resolution Adopting the MERS Defined Contribution Plan



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This Resolution is entered into under the provisions of 1996 PA 220 and the Municipal Employees' Retirement System of Michigan ("MERS") Plan Document, as each may be amended.

WHEREAS, the participating entity desires to adopt the MERS Defined Contribution Plan for its designated employees;

WHEREAS, the participating entity has furnished MERS with required data regarding each eligible employee and retiree;

WHEREAS, as a condition of MERS membership, and pursuant to the MERS Retirement Board's power as plan administrator and trustee under Plan Document Section 71 and MCL 38.1536, as each may be amended, it is appropriate and necessary to enter into a binding agreement providing for the administration of the Defined Contribution Plan, the reporting of wages, and the payment of the required contributions of a participating entity and withholding of employee contributions; now, therefore,

IT IS HEREBY RESOLVED:

On behalf of the participating entity, the governing body of

_____ adopts the MERS Defined Contribution Plan in accordance with Plan Section 4 for its eligible employees as described in the MERS Defined Contribution Adoption Agreement, subject to the MERS Plan Document and as authorized by 1996 PA 220, as both may be amended;

I hereby certify that the above is a true copy of the Defined Contribution Resolution adopted at the official meeting held by the governing body of this municipality:

Dated: _____, 20____. _____
(Signature of Authorized Official)

Printed name: _____
(Authorized Official - printed)

This Resolution shall have no legal effect under the MERS Plan Document until a certified copy of this adopting Resolution is filed with MERS, MERS determines that all necessary requirements under the Plan Document, the Adoption Agreement, and this Resolution have been met, and MERS certifies the Resolution below.

Received and Approved by the Municipal Employees' Retirement System of Michigan:

Dated: _____, 20____. _____
(Signature of Authorized MERS Representative)

MERS Defined Contribution Plan Adoption Agreement



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The Employer, a participating municipality or court within the state of Michigan that has adopted MERS coverage, hereby establishes the following Defined Contribution Plan provided by MERS of Michigan, as authorized by 1996 PA 220 in accordance with the MERS Plan Document.

I. Employer Name _____ **Municipality #:** _____

Division name _____

Note: This division should reflect how you currently define employees who are eligible to participate, for example, All full-time Employees, New hires after 1/1/2019, etc.

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20____.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

☐ Vesting credit from date of hire ☐ No vesting credit

☐ This division is for new hires, rehires, and transfers of current Defined Benefit* division #_____ and/or current Hybrid division #_____

Closing this division will change future invoices to a flat dollar amount instead of a percentage of payroll, as provided in your most recent annual actuarial valuation. (The amount may be adjusted for any benefit modifications that may have taken place since then.)

Current active (defined benefit or hybrid) employees (select one of the following and see [Plan Document](#), Section 64 for more information):

☐ Will have a one-time opportunity to convert the value of their current defined benefit from the existing defined benefit or hybrid plan into the new Defined Contribution Plan as a lump sum, or continue accruing service in the Defined Benefit. (Complete *MERS Defined Contribution Conversion Addendum*.)

☐ Will have a one-time opportunity to cease service accrual in the current plan and transfer to the new Defined Contribution plan for future service accrual, or continue accruing service in the Defined Benefit. The deadline for employees to make their election is: __/__/____

☐ Will be required to cease service accrual in Defined Benefit and will transfer to Defined Contribution for future service accrual.

** By completing the section above, the Employer acknowledges receiving Projection Study results and understands the municipality's obligation to continue funding the liability associated with the closed Defined Benefit division.*

B. ☐ If this is an **amendment** of an existing Adoption Agreement (existing division number _____), the effective date shall be the first day of _____, 20____.

Note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

MERS Defined Contribution Plan Adoption Agreement

- C. ☐ If this is to **separate employees** from an existing *Defined Contribution* division (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.
- D. ☐ If this is to **merge division(s)** _____ into division(s) _____, the effective date shall be the first of _____, 20____.
- E. ☐ If this is an amendment to close *Defined Benefit* division(s) # _____ or Hybrid division(s) _____ with new hires, rehires, and transfers going into existing *Defined Contribution* division # _____, the effective date shall be _____ (month/year).

Note: Closing this Defined Benefit or Hybrid division(s) will change future invoices to a flat dollar amount instead of a percentage of payroll, as provided in your most recent annual actuarial valuation.

(The amount may be adjusted for any benefit modifications that may have taken place since then).

III. Plan Eligibility

Only those employees eligible for MERS membership may participate in the MERS Defined Contribution Plan. If an employee classification is **included** in the plan, then employees that meet this definition are required to participate in the plan and earn time toward vesting. All eligible employees must be reported to MERS reported to MERS and earn time toward vesting. Some excluded classifications require additional information below. Please describe the specific classifications that are eligible for MERS within this division:

(For example: e.g., Full-time employees, Clerical staff, Union Employees participating in XXXX union)

This Division includes **public safety employees**: ☐ Yes ☐ No

To further define eligibility (select all that apply):

Employee Classification	Included	Excluded	Not Employed
Temporary Employees: Those who will work for the municipality fewer than _____ months in total	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Part-Time Employees: Those who regularly work fewer than _____ per _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Seasonal Employees: Those who are employed for tasks that occur at specific times of the year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voter-Elected Officials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appointed Officials: An official appointed to a voter-elected office	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contract Employees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	
Other 2: _____	<input type="checkbox"/>	<input type="checkbox"/>	

MERS Defined Contribution Plan Adoption Agreement

Probationary Periods (select one):

- ☐ Contributions will begin after the probationary period has been satisfied. Probationary periods are allowed in one-month increments, no longer than 12 months. During this probationary period, contributions will not be reported and service toward vesting will begin when probationary period has ended.

The probationary period will be _____ month(s).

Comments:

- ☐ Contributions will begin with the employee's date of hire (no Probationary Period). Effective with the date of hire, wages and any associated contributions must be submitted to MERS.

IV. Provisions

1. Leaves of Absence

Regardless of whether an employee is earning a wage while on the following types of leave:

- Third-party wages are not used in determining contributions for periods of leave.
- Vesting under elapsed time continues to accrue even if wages are not earned and contributions are zero.

Note: Employers who determine vesting based on an "hours-reported" method, should report actual worked hours for the month where there was a leave.

Types of leave include:

- Short Term and Long Term Disability
- Workers Compensation
- Unpaid Family Medical Leave Act (FMLA)

Leaves of absence due to military service are governed by the federal *Uniformed Services Employment and Reemployment Rights Act* of 1994 (USERRA), IRC 414(u), effective January 1, 2007, IRC 401(a)(37). Military reporting requires historical wage and contribution reporting for Defined Contribution as applicable.

2. Definition of Compensation

The Definition of Compensation selected must be used when determining both employer and employee contributions. Employers may include wage information along with employee and employer contributions when submitting wage/contribution reports to MERS.

Select your Definition of Compensation:

- ☐ Base Wages ☐ Box 1 Wages of W-2 ☐ Gross Wages
- ☐ Custom Definition

Click here to view details of Base, Box 1, and Gross Wages

(To customize your definition, please complete the [Custom Definition of Compensation Addendum](#).)

MERS Defined Contribution Plan Adoption Agreement

3. Forfeiture

A forfeiture occurs when a participant separates from employment prior to meeting the associated elapsed time (or hours reported) to receive vesting. The percentage of his/her employer contribution account balance that has not vested as of the date of termination will forfeit after 12 consecutive months following the termination date reported by the employer, or earlier, if the System distributes the participant's vested portion. MERS will utilize any available forfeiture balance as an automatic funding source applied to reported employer contributions at the time of reporting.

4. Vesting

Vesting will be credited using (check one):

- ☐ Elapsed time method – Employees will be credited with one vesting year for each 12 months of continuous employment from the date of hire.
- ☐ Hours reported method – Employees will be credited with one vesting year for each calendar year in which _____ hours are worked

Vesting schedule will be (check one):

- ☐ Immediate
- ☐ Cliff vesting (fully vested after a specified number of years, not to exceed 10 years) will be ____ years.
- ☐ Graded Vesting (the % of vesting acquired after employment for the designated number of years)
 - _____ % after 1 year of service
 - _____ % after 2 years of service
 - _____ % after 3 years of service (min 25%)
 - _____ % after 4 years of service (min 50%)
 - _____ % after 5 years of service (min 75%)
 - _____ % after 6 years of service (min 100%)

In the event of disability or death, an employee's (or his/her beneficiary's) entire employer contribution account shall be 100% vested, to the extent that the balance of such account has not previously been forfeited.

Normal Retirement Age (presumed to be age 60 unless otherwise specified) _____

If an employee is still employed with the municipality at the age specified here, their entire employer contribution balance will become 100% vested regardless of years of service.

MERS Defined Contribution Plan Adoption Agreement

5. Contributions

a. Contributions will be submitted (check one):

Contributions will be remitted according to Employer's "Payroll Period" which represents the actual period amounts are withheld from participant paychecks, or within the month during which amounts are withheld.

- | | |
|---|--|
| <input type="checkbox"/> Weekly | <input type="checkbox"/> Semi-Monthly (twice each month) |
| <input type="checkbox"/> Bi-Weekly (every other week) | <input type="checkbox"/> Monthly |

b. Employer Contributions

Required Employee Contributions and Employer Contributions are outlined using associated [Contribution Addendum for MERS Defined Contribution \(MD-073\)](#).

c. Post-tax voluntary employee contributions are allowable into a Defined Contribution account subject to Section 415(c) limitations of the Internal Revenue Code.

6. Loans: ☐ shall be permitted ☐ shall not be permitted

If Loans are elected, please refer to the [Defined Contribution & 457 Loan Addendum](#).

7. Rollovers from qualified plans are permitted and the plan will account separately for pre-tax and post-tax contributions and earnings thereon.

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Contribution Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Contribution Plan Adoption Agreement, the provisions of the Plan Document control.

VI. Modification of the terms of the Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of this Agreement is not effective until approved by MERS.

MERS Defined Contribution Plan Adoption Agreement

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. The Employer acknowledges that employee contributions (if any) and employer contributions must be submitted in accordance with the *MERS Reporting and Contribution Enforcement Policy*, the terms of which are incorporated herein by reference;
4. The Employer acknowledges that late or missed contributions will be required to be made up, including any applicable gains, pursuant to the Internal Revenue Code;
5. Should the Employer fail to make its required contribution(s) when due, MERS may implement any applicable interest charges and penalties pursuant to the *MERS Reporting and Contribution Enforcement Policy* and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. It is expressly agreed and understood as an integral and non-severable part of this Agreement that Section 43 of the Plan Document shall not apply to this Agreement and its administration or interpretation. In the event any alteration of the terms or conditions of this Agreement is made or occurs, under Section 43 or other plan provision or law, MERS and the Retirement Board, as sole trustee and fiduciary of the MERS plan and its trust reserves, and whose authority is non-delegable, shall have no obligation or duty to administer (or to have administered) the MERS Defined Contribution Plan, to authorize the transfer of any defined benefit assets to the MERS Defined Contribution Plan, or to continue administration by MERS or any third-party administrator of the MERS Defined Contribution Plan.

VIII. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by _____ on
the ____ day of _____, 20____. (Name of Approving Employer)

Authorized signature: _____

Title: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

Customized Definition of Compensation Addendum

(MERS Defined Benefit, Defined Contribution, Hybrid, or 457)



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If you choose to customize your Definition of Compensation as part of your MERS plan provisions, you must select boxes in each section you would like to include. You will be responsible for additional reporting details to track custom definitions.

Types of Compensation	
Regular Wages	
<input type="checkbox"/> Salary or hourly wage X hours	<input type="checkbox"/> On-call pay
<input type="checkbox"/> PTO used (sick, vacation, personal, bereavement, holiday leave, or unclassified)	<input type="checkbox"/> Other: _____
Other Wages apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Shift differentials	<input type="checkbox"/> Severance issued over time (weekly/bi-weekly)
<input type="checkbox"/> Overtime	<input type="checkbox"/> Other: _____
Lump Sum Payments apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> PTO payouts	<input type="checkbox"/> Payment for education
<input type="checkbox"/> Longevity	<input type="checkbox"/> Moving expenses
<input type="checkbox"/> Bonuses	<input type="checkbox"/> Sick payouts
<input type="checkbox"/> Merit pay	<input type="checkbox"/> Severance (if issued as lump sum)
<input type="checkbox"/> Job certifications	<input type="checkbox"/> Other: _____
Taxable Payments apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Travel through a non-accountable plan (i.e. mileage not tracked for reimbursement)	<input type="checkbox"/> Car allowance
<input type="checkbox"/> Prizes, gift cards	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Personal use of a company car	
Reimbursement of Nontaxable Expenses (as defined by the IRS) apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Gun, tools, equipment, uniform	<input type="checkbox"/> Mileage reimbursement
<input type="checkbox"/> Phone	<input type="checkbox"/> Travel through an accountable plan (i.e. tracking mileage for reimbursement)
<input type="checkbox"/> Fitness	<input type="checkbox"/> Other: _____
Types of Deferrals	
Elective Deferrals of Employee Premiums/Contributions apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> 457 employee and employer contributions	<input type="checkbox"/> IRA contributions
<input type="checkbox"/> 125 cafeteria plan, FSAs and HSAs	<input type="checkbox"/> Other: _____
Types of Benefits	
Nontaxable Fringe Benefits of Employees apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Health plan, dental, vision benefits	<input type="checkbox"/> Group term or whole life insurance < \$50,000
<input type="checkbox"/> Workers compensation premiums	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Short- or Long-term disability premiums	
Mandatory Contributions apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Defined Benefit employee contributions	<input type="checkbox"/> Other: _____
<input type="checkbox"/> MERS Health Care Savings Program employee contributions	
Taxable Fringe Benefits apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Clothing reimbursement	<input type="checkbox"/> Group term life insurance > \$50,000
<input type="checkbox"/> Stipends for health insurance opt out payments	<input type="checkbox"/> Other: _____
Other Benefits / Lump Sum Payments apply: YES <input type="checkbox"/> NO <input type="checkbox"/>	
<input type="checkbox"/> Workers compensation settlement payments	<input type="checkbox"/> Other: _____

Contribution Addendum for MERS Defined Contribution (and DC portion of Hybrid)



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This is an Addendum to the Adoption Agreement completed by _____
Name of Participating Employer

for _____ of _____
Employee Group Division Code

The Addendum modifies the MERS Defined Contribution Adoption Agreement. Please complete this addendum for each contribution structure associated with the covered employee group.

Required **Employee Contribution** structure to DC (subject to Internal Revenue Code 415(c) limitations)

Select one:

☐ Employees are required to contribute per payroll period:

Percentage 5 % **OR** flat dollar amount \$ _____

☐ Employees are required to contribute within the following range for each payroll:

Percentage range from ____% to ____% **OR** dollar amount range \$ _____ to \$ _____

Direct Required Employee Contributions: ☐ Pre-tax ☐ After-tax

The Participating Employer will make matching contributions into the Defined Contribution Plan based on
(CHECK ALL THAT APPLY):

☐ Each Employee's election to defer salary under the MERS 457 program (or any other qualified plan outside of MERS).

☐ Each Employee's one-time election of required employee contributions for MERS Defined Contribution.

Contribution Addendum for MERS Defined Contribution (and DC portion of Hybrid)



1134 Municipal Way Lansing, MI 48917 | 800.767.2308 | Fax 517.703.9711

www.mersofmich.com

The Participating Employer elects to make contributions as follows (check and complete Matching, Non-Matching, or both as applicable):

☐ **Matching Contributions**

The Employer elects the following matching contribution formula:

- ☐ **Percentage:** For each payroll period in which Employee contributions described above are made, the Participating Employer will contribute ____% of the Employee contribution amount.

For example, if an Employer elects a 50% match, then for every \$10 the participant defers to the Program, the Employer will contribute \$5 to the Program.

- ☐ **Flat Dollar:** For each payroll period in which Employee contributions described above are made, the Participating Employer will contribute no more than \$_____ per payroll period.

Employer Cap: The Employer elects to establish a cap on its matching contributions, so that the match amount cannot exceed a certain amount. The Employer elects the following cap on its matching contribution:

- ☐ **Flat Dollar Cap:** In no event will matching contributions made on behalf of a participant exceed a flat dollar amount equal to \$_____ per _____.
- ☐ **Cap Equal to Percentage of Total Compensation:** In no event will matching contributions made on behalf of a participant exceed ____% of the participant's IRS Section 401(a)(17) includable compensation as defined by the Employers' Adoption Agreement (cannot exceed 100% of participant's income).

☐ **Non-Matching Contributions**

The Employer hereby elects to make contributions to the participants' accounts without regard to a participant's contribution amount (check one):

- ☐ **Annual:** A one-time annual contribution of \$_____ or ____% of compensation per participant.
- ☐ **Pay Period:** \$ _____ or _____% of compensation per participant for each payroll period.



Pamela Colestock – Mayor
William Steele – Mayor Pro Tem
Suzanne Politza – Councilwoman
Stacey Robison – Council-at-Large
Ken Nicholas – Councilman

200 S. Main Street
Eaton Rapids, MI 48827
(517) 663-8118
Fax (517) 663-1116
www.cityofeatonrapids.com

Yvonne Ridge – City Manager
Laura Boomer – City Clerk
Larry Joe Weeks – Police Chief
Roger McNutt – Fire Chief
Marrie Jo Carr – Treasurer
LeRoy Hummel – Building Official
Rob Pierce – Public Works/Utilities Director
Randy Jewell – City Assessor
**Corey Cagle – Director of Parks,
Recreation & Events**

MEETING DATE: 10/19/2022

CITY MANAGER

To: Mayor and City Council
From: Yvonne Ridge, City Manager
Submitted: 10/19/2022
Subject: Dam Discussion – Mr. Davis

☒ Work Session

☐ Regular Meeting

SUMMARY

I have had several discussions regarding the Dam with Mr. Davis. Director Pierce and I also went on a tour of the Dam with Mr. Davis. Yesterday I received an email from Mr. Davis indicating he had a call with the Federal Energy Regulatory Commission along with the DNR and EGLE on what to do with the state street dam. He also indicated he had a CLEAR Path forward and would like to sit down with me to discuss his options and the cities options in early November.

STAFF RECOMMENDATION/MOTION

Discussion regarding the Dam.

LIST OF SUPPORTING DOCUMENTS

Power Purchase Agreement & Interconnection Agreement

GENERATOR INTERCONNECTION AGREEMENT
BETWEEN
CITY OF EATON RAPIDS
AND
GRAND RIVER POWER COMPANY

This Generator Interconnection Agreement (“Agreement”) is made and entered into between the City of Eaton Rapids, Michigan (the “Utility”) and Grand River Power Company (“Interconnection Customer”). The Utility and Interconnection Customer are herein sometimes referred to individually as “Party” and collectively as “Parties,” where appropriate.

WITNESSETH:

WHEREAS, Interconnection Customer owns two hydroproject generating facilities at the Mix and Smithville dams subject to Federal Energy Regulatory Commission License P-11150 (“Generating Facilities”) already connected to the Utility’s Distribution System;

WHEREAS, the Parties are not aware of an effective agreement governing the interconnection of the Generating Facilities; and

WHEREAS, the Interconnection Customer wishes to receive, and the Utility agrees to provide under the Public Utility Regulatory Policies Act of 1978 (as amended) (“PURPA”), interconnection service; and

WHEREAS, the Interconnection Customer is exploring whether to cease power production at the Mix dam.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

Article I
Scope and Limitations of Agreement

1.1 This Agreement governs the terms and conditions under which the Interconnection Customer’s Generating Facilities will remain interconnected with, and operate in parallel with, the Utility’s Distribution System.

1.2 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer’s power. The purchase or delivery of power and other services that the Interconnection Customer may require will be covered under separate agreements, if any.

1.3 The Parties shall perform all obligations of this Agreement in accordance with all Applicable Laws and Regulations and Good Utility Practice. The Interconnection Customer

agrees to maintain and operate its Generating Facilities to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Utility.

Article II

Term, Termination, and Disconnection

2.1 Term of Agreement. This Agreement shall become effective on the Effective Date and shall remain in effect for a period of one year from the Effective Date.

2.2 Replacement Agreement. At least one month before the one-year term of this Agreement is set to expire, the Utility will provide to Interconnection Customer, in accordance with PURPA, a replacement generator interconnection agreement for the Generating Facilities that Interconnection Customer wishes to continue to use to generate electricity. The replacement agreement will identify any Interconnection Facilities warranted for the Utility to provide safe and reliable interconnection service for whichever Generating Facilities Interconnection Customer wishes to continue to use to generate electricity.

2.3 Termination.

(a) The Interconnection Customer may terminate this Agreement at any time by giving the Utility 30 days' written notice.

(b) Either Party may terminate this Agreement after Default pursuant to article 4.6.

(c) Upon termination of this Agreement, the Generating Facilities will be disconnected from the Utility's Distribution System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this Agreement or such non-terminating Party otherwise is responsible for these costs under this Agreement.

(d) The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

(e) The provisions of this article shall survive termination or expiration of this Agreement.

2.4 Temporary Disconnection.

(a) Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

(b) Emergency Conditions. "Emergency Condition" shall mean a condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of the Utility, is imminently likely to cause a material adverse effect on the security of, or damage to the Utility's equipment or Distribution System; or (3) that, in the case of the Interconnection Customer, is imminently likely to cause a material adverse effect on the security of, or damage to, the Generating Facilities Under Emergency

Conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the Generating Facilities. The Utility shall notify the Interconnection Customer promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Interconnection Customer's operation of its Generating Facilities. The Interconnection Customer shall notify the Utility promptly when it becomes aware of an Emergency Condition that may reasonably be expected to affect the Utility's Distribution System or equipment. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

(c) Routine Maintenance, Construction, and Repair. The Utility may interrupt interconnection service or curtail the output of the Generating Facilities and temporarily disconnect the Generating Facilities from the Utility's Distribution System when necessary for routine maintenance, construction, and repairs on the Utility's Distribution System. The Utility shall provide the Interconnection Customer with five days' notice prior to such interruption. The Utility shall use Reasonable Efforts to coordinate such reduction or temporary disconnection with the Interconnection Customer.

(d) Forced Outages. During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility's Distribution System. The Utility shall use Reasonable Efforts to provide the Interconnection Customer with prior notice. If prior notice is not given, the Utility shall, upon request, provide the Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

(e) Adverse Operating Effects. The Utility shall notify the Interconnection Customer as soon as practicable if, based on Good Utility Practice, operation of the Generating Facilities may cause disruption or deterioration of service to other customers served from the same electric system, or if operating the Generating Facilities could cause damage to the Utility's Distribution System. If, after notice, the Interconnection Customer fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the Generating Facilities. The Utility shall provide the Interconnection Customer with five days' notice of such disconnection, unless the provisions of article 2.3(b) apply.

(f) Modification of the Generating Facilities. The Interconnection Customer must receive written authorization from the Utility before making any material changes to the Generating Facilities. Modifications shall be done in accordance with Good Utility Practice. If the Interconnection Customer makes such modification without the Utility's prior written authorization, the Utility shall have the right to temporarily disconnect the applicable Generating Facility.

Article III

Interconnection Facilities and Cost Responsibility

3.1 Interconnection Facilities.

(a) The Interconnection Customer shall pay for the reasonably incurred actual costs of new Interconnection Facilities itemized in and in accordance with Attachment 2 of this Agreement.

(b) Attachment 3 contains a one-line diagram of the Interconnection Customer's Generating Facilities, Interconnection Customer's Interconnection Facilities, and Utility's Interconnection Facilities. The Parties agree that the one-line diagram correctly identifies Party ownership of the equipment as noted by the Ownership Demarcation for the Interconnection Facilities for each Generating Facility. The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (1) owning, operating, maintaining, repairing, and replacing its own facilities, and (2) operating, maintaining, repairing, and replacing the Utility's Interconnection Facilities.

3.2 Access. The Utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or, if necessary, to provide service to its customers.

Article IV

Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

4.1 This Agreement may not be assigned by either Party without first obtaining written approval by the other Party. Consent to assignment will not be unreasonably withheld, conditioned or delayed. Any attempted assignment that violates this article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

4.2 Limitation of Liability. Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

4.3 Indemnification.

(a) This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 4.2.

(b) The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement

on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

(c) If an indemnified person is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

(d) If an indemnifying party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

(e) Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

4.4 Consequential Damages. Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

4.5 Force Majeure.

(a) As used in this article, a Force Majeure Event shall mean "any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing."

(b) If a Force Majeure Event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure Event (Affected Party) shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure Event. The notification must specify in reasonable detail the circumstances of the Force Majeure Event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure Event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent

that the effect of the Force Majeure Event cannot be mitigated using Reasonable Efforts. The Affected Party will use Reasonable Efforts to resume its performance as soon as possible.

4.6 Default.

(a) No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure Event as defined in this Agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in article 4.6(b), the defaulting Party shall have 60 calendar days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within 60 calendar days, the defaulting Party shall commence such cure within 20 calendar days after notice and continuously and diligently complete such cure within six months from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

(b) If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article V Miscellaneous

5.1 Waiver.

(a) The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

(b) Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

5.2 Entire Agreement. This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements,

representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

5.3 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

5.4 Environmental Releases. Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facilities or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article VI
Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Utility

Name: Samuel & Celestial

Title: Mayor

Date: 6/16/2022

AND

Name: Laura Bon

Title: Clerk

Date: 6/15/2022

For the Interconnection Customer

Name: _____

Title: _____

Date: _____

Article VI
Signatures


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Utility

Name: _____

Title: _____

Date: _____

For the Interconnection Customer
Name: GRAND RIVER POWER ROY DAVIS JR
Title: PRESIDENT
Date: JUNE 7 2022


Glossary of Terms

Default – The failure of a breaching Party to cure its breach under this Agreement.

Distribution System – The Utility’s facilities and equipment used to transmit electricity to ultimate usage points, such as homes and industries.

Good Utility Practice – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority – Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Interconnection Customer, the Interconnection Provider, or any Affiliate thereof.

Interconnection Facilities – All facilities and equipment between the Generating Facilities and the Distribution System. They include Interconnection Customer’s Interconnection Facilities and the Utility’s Interconnection Facilities.

Ownership Demarcation – The points identified in Attachment 3 distinguishing the facilities owned by the Interconnection Customer from those owned by the Utility.

Reasonable Efforts – With respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Description and Costs of New Interconnection Facilities

The Utility has identified the need to install the equipment listed below as new Interconnection Facilities owned by the Utility to provide interconnection service to Interconnection Customer and to protect the Utility's Distribution System. Interconnection Customer agrees to pay for the Utility's reasonably incurred actual costs for purchase and installation of this equipment. The Utility provides below a cost estimate for the purchase and installation for each item.

1. Three-phase disconnect switch for the Smithville hydroproject needs to be replaced. Estimated cost \$6,500.
2. Primary metering for the Smithville hydroproject needs to be replaced. Estimated cost \$8,500.
3. Install smart metering with cellular communication link to Michigan Public Power Agency for the Smithville hydroproject. Estimated cost \$6,000.

Total estimated cost: \$21,000

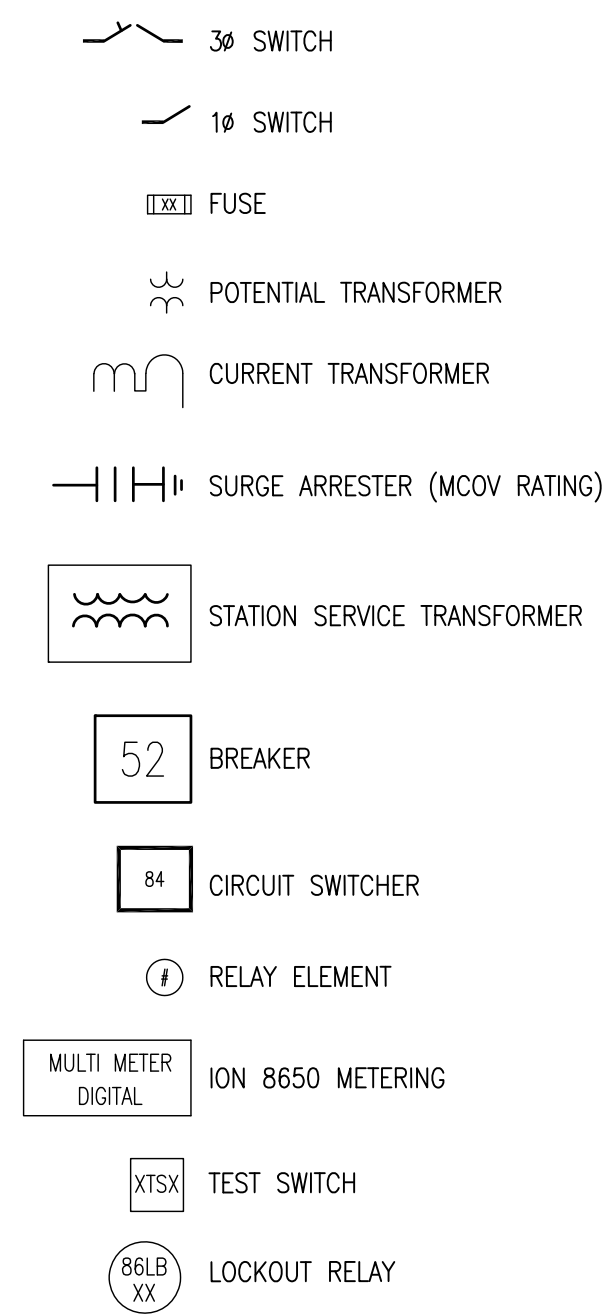
For items (1) and (2), the Utility will withhold as a security their estimated cost from the payment it will make as Buyer for previously delivered energy under Section 7.1 of the separately executed Power Purchase Agreement. To the extent this amount exceeds the Utility's actual costs, the Utility will promptly refund the excess amount to Interconnection Customer upon completion of installation of the applicable equipment. Should the Utility's reasonably incurred actual costs exceed the total amount withheld, Interconnection Customer agrees to allow the Utility to offset the additional amount against the Utility's payments to Interconnection Customer under the Power Purchase Agreement.

The Utility will not invoice Interconnection Customer for item (3) until after its installation is complete, and no earlier than 180 days after this Agreement becomes effective. Interconnection Customer will pay for this item by allowing the Utility to net the total cost against the monthly energy payments the Utility will make to Interconnection Customer under the separate Power Purchase Agreement.

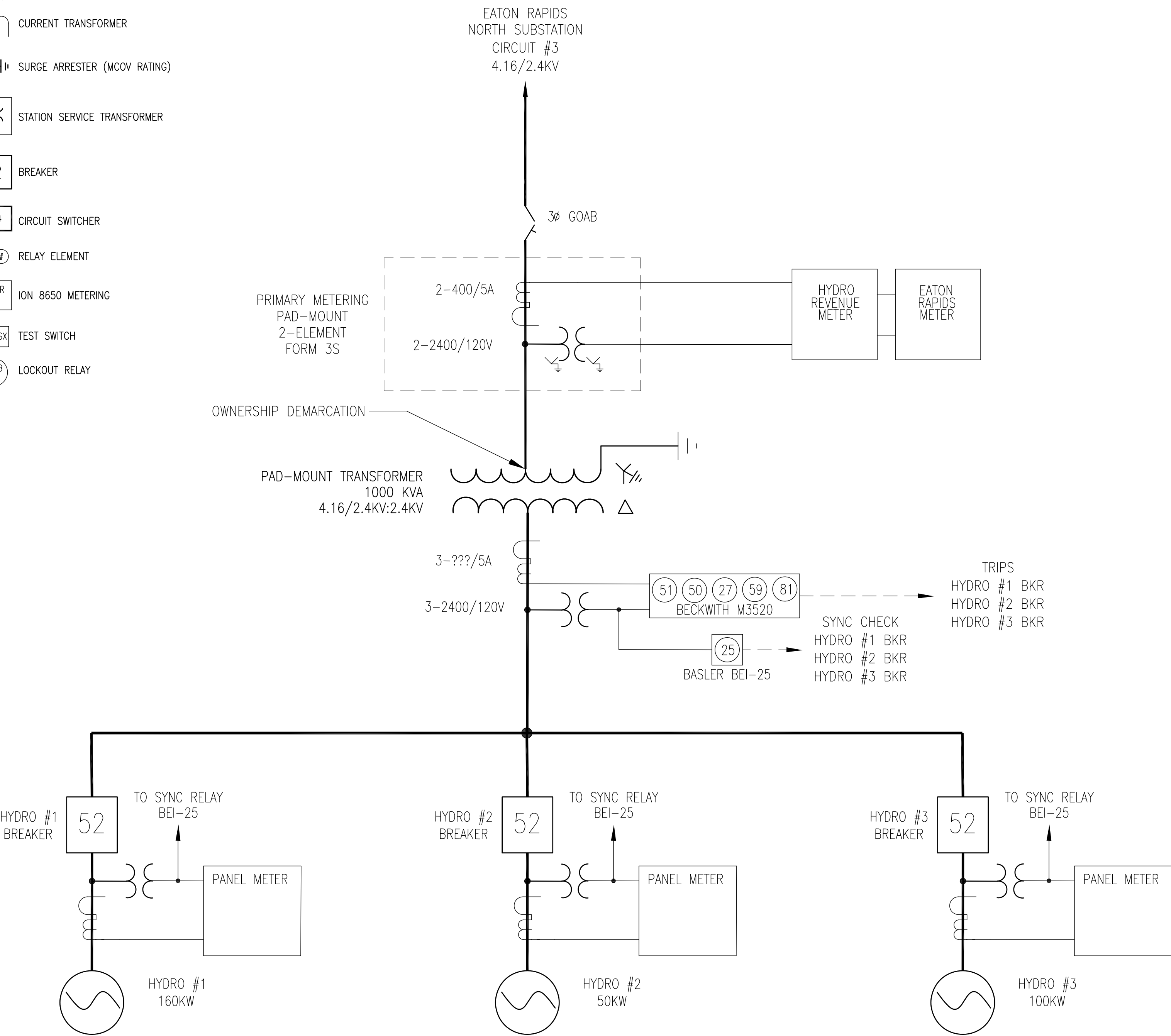
One-line Diagram Depicting the Generating Facilities, Interconnection Facilities, Metering Equipment, and Upgrades

P:\13-0565.01 EATON RAPIDS MISC. ENGINEERING\PD5\EATON RAPIDS HYDRO (ONE LINE DIAGRAM).DWG 4/29/2022 3:07:56 PM #####

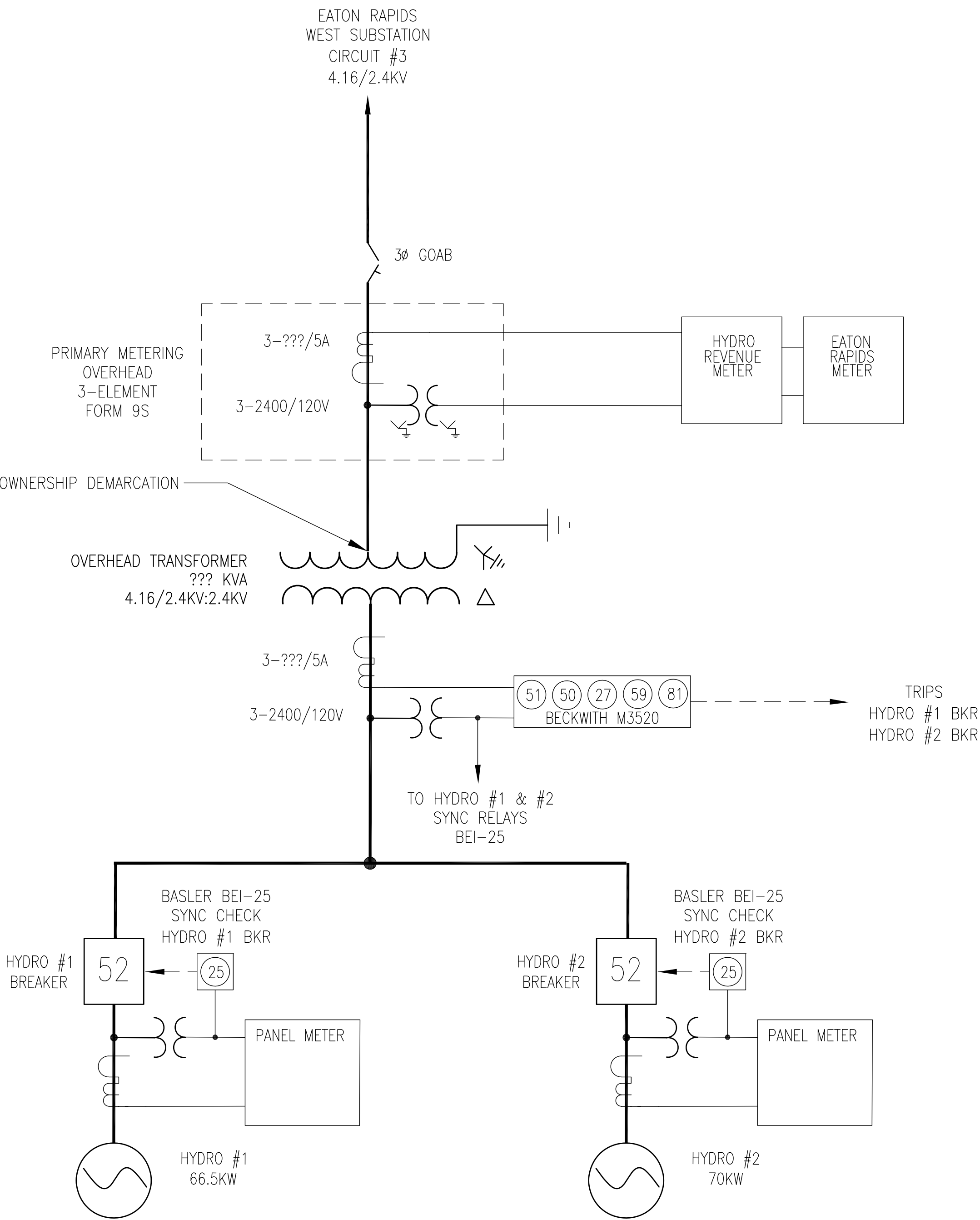
SUBSTATION ONE LINE LEGEND



SMITHVILLE HYDRO



DOWNTOWN / MAIN ST HYDRO



	ENG.	NAW		
	DR	NAW		
	CK	MPM		
	APP	MPM	04-29-2022	AS-FOUND ONE LINE DIAGRAM
			03-31-2022	PRELIMINARY ONE LINE DIAGRAM
			DATE	ISSUED FOR

GRP
Engineering, Inc.

PETOSKEY, MICHIGAN, 231-439-9683
GRAND RAPIDS, MICHIGAN, 616-942-7183

CITY OF EATON RAPIDS

HYDRO GENERATION

EATON RAPIDS, MI

HYDRO - ONE LINE DIAGRAM

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PROJECT
NUMBER

13-0565.01

DRAWING
NUMBER

001

POWER PURCHASE AGREEMENT

BETWEEN

CITY OF EATON RAPIDS

AND

GRAND RIVER POWER COMPANY

POWER PURCHASE AGREEMENT

PART I

This Power Purchase Agreement (“PPA”) is made as of the following date: January 1, 2022. The PPA, together with the exhibits, schedules and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties shall be referred to as the “Agreement.” The Parties to this PPA are the following:

City of Eaton Rapids or “Buyer”

All Notices:

Street: 200 S. Main St
City: Eaton Rapids State: MI Zip: 48827
Attn: Laura Boomer
Phone: 517-663-8118
Email: lboomer@cityofeatonrapids.com

Contract Characteristics:

Plant Names:

Plant Types:

Plant Nameplate Capacity (MWAC):

Start Date:

Expected Termination Date:
consistent with Section 2.1 herein

Contract Term:

Energy Purchase Price:

Grand River Power Company or “Seller”

All Notices: Grand River Power Company

Street: 6731 Morse Drive
City: Olivet State: MI Zip: 49076
Attn: Sean Dombroski
Phone: 517-285-8720
Email:

Smithville and Mix, as described in FERC
License No. P-11150

Hydro-electric

.768 kW

January 1, 2021

Upon the Effective Date, on a month-to-month basis

Continuing month-to-month

\$0.045/kWh

Terms and Conditions attached, and all Exhibits are part of this Agreement. BUYER AND SELLER EACH ACKNOWLEDGE HAVING READ SAID DEFINITIONS AND TERMS AND CONDITIONS AND AGREE TO SAID TERMS AND CONDITIONS.

City of Eaton Rapids

(Buyer)

By: 

(Signature)

Printed Name: Pamela K Catestock

Title: Mayor

Date: 6/14/2022

Grand River Power Company

(Seller)

By: _____


(Signature)

Printed Name: _____

Title: _____

Date: _____

AND

By: 

(Signature)

Printed Name: Laura Boomer

Title: Clerk

Date: 6/15/2022

(Signature)

City of Eaton Rapids

(Buyer)

By: _____

(Signature)

Printed Name: _____

Title: _____

Date: _____

Grand River Power Company

(Seller)

By: _____

(Signature)

Printed Name: SEAN DUMBROSKI

Title: MANAGING PARTNER

Date: 5-13-2022

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PART III: TERMS AND CONDITIONS

This Power Purchase Agreement (“Agreement”) is made and entered into as of the date identified in Part I, between “Buyer” and “Seller” as identified in Part I. Buyer and Seller are herein sometimes referred to individually as “Party” and collectively as “Parties,” where appropriate.

WITNESSETH:

WHEREAS, there has been disagreement between the Parties over terms for a new power sales contract since at least January 1, 2021, yet Seller has provided to Buyer power during that period; and

WHEREAS, the Parties wish to enter into an agreement to provide compensation to Seller for power delivered to Buyer to date and until a new Agreement is reached; and

WHEREAS, the Parties are still in discussion around matters in addition to power sales and do not wish to waive any rights or claims associated with those matters; and

WHEREAS, this Agreement has been prepared pursuant to the Public Utility Regulatory Policies Act of 1978 as amended and as implemented by the State of Michigan; and

WHEREAS, Buyer is a municipal utility and owns electric facilities and is engaged in the generation, purchase, distribution and sale of electric energy in the State of Michigan; and

WHEREAS, Seller owns and operates the generating plants identified in Part I; and

WHEREAS, Seller wishes to deliver and sell and Buyer agrees to receive and purchase from the Plant, electric energy associated with such Plant; and

WHEREAS, Seller and Buyer have entered into this Agreement at a negotiated rate for the energy provided by the Plant.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings provided below unless specifically stated otherwise in this Agreement:

“Agreement” – Defined in Part I.

“Applicable Law” – Means , with respect to any Person or the Facility, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives and requirements of all Governmental Authorities, in each case applicable to or binding upon such Person or the Facility (as the case may be).

“Billing Month” – Means the billing period to start on the sixteenth day of a calendar month, or the closest Business Day thereafter, and end on the fifteenth (15th) day of the following calendar month, or the closest Business Day thereafter. The first Billing Month shall commence [xxx] 16, 2022.

“Business Day” – Means any day except Saturday, Sunday, a federal legal holiday in the United States, or any day on which banking institutions in the State of Michigan are authorized or required by law or other governmental action to close.

“Buyer” – Means the party specified in Part I.

“Contract Term” – Means the period of time specified in Part I.

“Defaulting Party” – Defined in Section 9, Events of Default.

“Effective Date” – Defined in Subsection 2.1, Effective Date and Term.

“Emergency or Emergencies” – A condition or conditions on the Buyer’s distribution system which in the Buyer’s sole reasonable judgment either has, or is likely to, result in significant imminent disruption of service to its customers or to Seller, or imminent endangerment to life or property.

“Energy Purchase Price” – Defined in Part I.

“Environmental Attribute(s)” – Means an instrument used to represent the environmental benefits associated with a fixed amount of electricity generation; excluding Renewable Energy Credits, for the purpose of the Agreement. Environmental Attributes represent the general environmental benefits of renewable generation such as air pollution avoidance. The exact quantity of the environmental benefit (e.g., pounds of emission reductions of a given pollutant) may not be indicated by an Environmental Attribute, though it can be quantified separately in pollution trading markets and through engineering estimates. The Environmental Attribute represents all environmental benefits, whether or not trading markets for such pollutants or benefits exist.

“Force Majeure” – Defined in Subsection 8, Force Majeure.

“Governmental Authority” – Means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, including NERC, FERC and MISO.

“Interconnection Agreement” – Means the agreement between Seller and the Buyer which describes the terms and conditions regarding the connection of Seller’s Plant to Buyer’s Distribution System.

“Late Payment Interest Rate” – Means the lesser of (a) the per annum rate of interest equal to the prime lending rate as may be from time to time published in The Wall Street Journal under Money Rates on such day or on the most recent preceding day on which published, plus two percent (2%) or (b) the maximum rate permitted by applicable law.

“MISO” – Means the Midcontinent Independent System Operator, Inc. including any successor thereto.

“MISO Rules” – Means the Open Access Transmission, Energy and Operating Reserve Markets Tariff, including all schedules or attachments thereto, of MISO, as amended from time to time, including any successor tariff or rate schedule approved by the Federal Energy Regulatory Commission, together with any applicable MISO Business Practice Manual as amended from time to time.

“Plant” – Means the generating facilities identified in Part I as the Plant Names, including all interconnected transmission lines, meters or other equipment on the Seller’s side of the ownership demarcation specified in the Interconnection Agreement.

“Plant Nameplate Capacity” – Means the potential output capacity of the Plant in MW_{AC} as specified in Part I.

“Points of Delivery” – Means the locations identified in the one-line diagram included in the Interconnection Agreement where the Utility’s Interconnection Facilities meet the circuit that is part of the Utility’s Distribution System.

“Renewable Energy Credit(s)” or “REC(s)” – Has the meaning specified in MCL460.1033.

“Seller” – Means the party specified in Part I.

“Start Date” – Defined in Part I.

“Term” – Has the meaning specified in Section 2.1.

Terms not otherwise defined in this Agreement shall have the meanings provided in the Interconnection Agreement.

2. GENERAL PROVISIONS

2.1 Effective Date and Term

This Agreement shall be effective upon execution by both Parties (“Effective Date”). Once effective, unless terminated as provided in this Agreement, this Agreement shall continue on a month-to-month basis (the “Term”).

2.2 Termination

This Agreement may be terminated by either party with sixty (60) days’ advance, written notice.

2.3 “Qualifying Facility” Status and Seller’s Warranty

Seller hereby represents to Buyer that the Plant has achieved qualifying status by the Start Date as a "small power production facility" under 18 CFR §§ 292.201-292.207.

Seller will use commercially reasonable efforts to ensure that the Plant will maintain its status as a "Qualifying Facility" under the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, 92 Stat 3117 and the implementing Federal Regulations promulgated thereunder as such are amended to the Effective Date of this Agreement and appear at 18 CFR §§ 292.101 through 292.602, throughout the term of this Agreement. In the event Seller fails to maintain such "Qualifying Facility" status, Buyer shall have the option at its sole discretion of terminating this Agreement without recourse by giving Seller sixty (60) days’ written notice.

3. CAPACITY AND ENERGY TO BE SUPPLIED

Subject to the terms and conditions of this Agreement, beginning with the Start Date and continuing until the termination of this Agreement, Seller agrees to sell and supply to Buyer, and Buyer agrees to accept and purchase from Seller, all energy, and capacity that Seller supplies and/or delivers to Buyer under this Agreement. Compensation shall be paid in accordance with the terms herein.

4. PERMITS AND LAWS

Seller hereby represents to Buyer that it has secured all licenses and permits required by Applicable Law, including those Applicable Laws pertaining to the generation of electric energy needed to operate this Plant. Seller shall maintain all such licenses and permits throughout the Term of this Agreement. In addition, Seller shall comply with all Applicable Laws, including, but not limited to, those pertaining to the above licenses and permits made by any Governmental Authority or public regulatory body. At any time during the term of this Agreement, Buyer may request that Seller provide copies of any such licenses and permits, and Seller shall so provide them within five (5) Business Days.

5. METERING

All electric energy that is delivered by Seller to the Buyer shall be metered by Seller as indicated in the Interconnection Agreement and shall be separately metered from electric energy generated by generating facilities other than the Plant. Hourly Interval registering meters are required for each generating unit served. To determine the amount of electric energy delivered, the metered values shall be adjusted for transformer losses and line losses, if applicable, between the metering location and the Point of Delivery.

6. OPERATION OF PLANT

6.1 Seller's Operating Obligations

Seller shall operate and maintain the Plant in accordance with prudent utility practices and Applicable Law which applies to generating units such as Seller's Plant. Seller shall promptly inform Buyer as to significant changes in the operating status of the Plant, including, but not limited to, Plant outages.

6.2 Outages of Generating Equipment

Seller shall promptly provide to Buyer all material information relating to Plant outages and significant derates of Plant generating capacity that would affect Seller's ability to deliver electric energy from the Plant to the Point of Delivery.

Seller shall confirm its schedule of generating capacity outages planned by Seller for a calendar year with Buyer in writing by August 1st of the prior calendar year. At least seven (7) days prior to any scheduled outage and/or planned outage, Seller shall confirm with Buyer the expected start date of such outage and the expected completion date of such outage. Seller shall notify Buyer

of any subsequent changes to the outage. As soon as practicable, any oral notifications shall be confirmed in writing.

6.3 Interconnection Agreement

The Parties must enter into and comply with the Interconnection Agreement. Seller shall cooperate with Buyer to enable Buyer to monitor, in real time, all electric energy generated by the Plant.

6.4 Emergencies and Exempt Operational Periods

Buyer shall not be obligated to accept electric energy or make payments based on electric energy delivered during any of the following events: (i) Emergencies after Buyer has given Seller timely notice of such Emergencies; (ii) events of Force Majeure, (iii) Exempt Operational Periods, (iv) Seller's scheduled outages of the Plant, or (v) Seller's non-compliance with the Interconnection Agreement.

7. COMPENSATION

7.1 Energy Payment

Commencing with the month in which the Parties fully execute this Agreement, and continuing for the term of this Agreement, Buyer shall pay Seller for energy delivered during the applicable Billing Month. Such payments shall be made monthly in accordance with the billing procedure in Section 8.1. Seller shall receive a monthly energy payment equal to the Power Purchase Price indicated in Part I multiplied by the energy delivered for the applicable Billing Month. For energy delivered by Seller to Buyer between January 1, 2021, and first day of the Billing Month in which the parties fully execute this Agreement, Buyer shall pay seller within 60 days.

8. BILLING

8.1 Billing Procedure

As soon as practicable after the end of each Billing Month, but in no event later than thirty (30) calendar days after the end of a Billing Month, Buyer shall submit to Seller a statement ("Statement") which shall identify any amounts owed by Buyer or Seller during such Billing Month. Such Statement shall use metered data. At least three (3) days prior to the payment due date, the Parties will review the final billing data and confirm the final amount owed by Buyer or Seller, as applicable. If necessary, Buyer shall submit a revised Statement to Seller.

The net amount due shall be paid by the owing Party via electronic funds transfer of said amount by the last banking day of the calendar month following the Billing Month. Any undisputed amounts not paid when due shall bear interest until paid at the Late Payment Interest Rate.

If metered data is unavailable, Buyer may render a Statement based on its best estimate of the amount owed by Buyer or Seller to meet the payment deadline. Such a Statement shall indicate that it represents a best estimate of the amount owed. Such an estimate may utilize Seller's metered data, if available. If an estimate is used, an adjustment shall be made if necessary to the next Billing Month Statement issued after the date upon which actual data is determined to correct the prior Billing Month estimate.

8.2 Disputes

Seller may, in good faith, dispute the correctness of any Statement or any adjustment to a Statement, rendered under this Agreement and Buyer may adjust any Statement for any arithmetic or computational error within ninety (90) days of the date the Statement, or adjustment to a Statement, was rendered. Any Statement dispute or Statement adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is fully resolved, including any associated appeals. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Late Payment Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments where Buyer pays Seller an amount greater than the Statement amount shall be returned within five (5) Business Days upon request or deducted by Buyer, including the date of such overpayment to but excluding the date repaid. Any dispute with respect to a Statement is waived unless the other Party is notified in accordance with this Subsection within ninety (90) days after the Statement is rendered or any specific adjustment to the Statement is made.

9. EVENTS OF DEFAULT

An Event of Default shall mean, with respect to a Party ("Defaulting Party") the occurrence of any of the following:

- a. The failure to make, when due, any payment required pursuant to this agreement if such failure is not remedied within five (5) business days after written notice is received;

- b. Such Party becomes bankrupt (whether voluntarily or involuntarily);
- c. Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- d. The making of a representation or warranty that is false or misleading in any material respect when made or when deemed or repeated that is not cured within the cure period identified by the affected Party, such period to be not less than ten (10) Business Days;
- e. The failure of a Party to perform or observe any material term or condition of the Agreement that is not cured within thirty (30) calendar days of written notification thereof by the other Party, including, but not limited to:
 - (i) Failure of either Party to comply with the terms and conditions of this Agreement;
 - (ii) Failure of Seller to provide Buyer commercially reasonable access rights to the Plant, or Seller's attempt to revoke or terminate such access rights;
 - (iii) Failure of either Party to provide information or data to the other Party as required under this Agreement; or
 - (iv) Material modification of the Plant equipment that increases the Plant's maximum electric output after the Start Date, without the prior written consent of Buyer;

10. FORCE MAJEURE

10.1 Definition

The term "Force Majeure" means acts or actions which wholly or partly prevents or delays the performance of any obligation arising under this Agreement but only to the extent the event is (i) beyond the reasonable control of the affected Party; (ii) despite the exercise of reasonable

diligence, cannot be prevented, avoided or overcome by such Party; (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof; and (iv) not due to negligence or failure to perform of the Party affected. Force Majeure includes without limitation, acts of God; flood, earthquake, storm or other natural calamity; war; insurrection; riot; epidemic or pandemic; curtailment (including any curtailment ordered by any Governmental Authority or authority in charge of electric reliability), order, regulation or restriction imposed by Governmental Authority; fire or explosion not caused by the Party claiming Force Majeure; transportation accidents or perils at sea; or other similar cause beyond the reasonable control but.

10.2 Obligations Under Force Majeure

Force Majeure shall apply to the following situations:

(a) If Seller is rendered wholly or partially unable by the occurrence of a Force Majeure event to supply energy, then, for the duration of the Force Majeure event, subject to the conditions below, Seller's obligations to supply energy to Buyer and Buyer's obligation to pay for energy shall be limited to the amount of energy that Seller actually supplies.

(b) If Buyer is rendered unable by the occurrence of a Force Majeure event to receive energy supplied by Seller, then, for the duration of the Force Majeure event, subject to the conditions below, Buyer's obligation to pay Seller for energy and Seller's obligations to supply energy to Buyer shall be suspended to the extent that Buyer is unable to receive energy supplied by Seller.

The Party rendered wholly or partially unable to perform because of a Force Majeure event shall promptly give written notice to the other Party, including a description of such Force Majeure event, an estimate of the anticipated duration of such Force Majeure event, and the effect of the Force Majeure event on the Party's performance obligation. Unless performance has already resumed, the Party rendered wholly or partially unable to perform because of a Force Majeure event shall, within thirty (30) days of the date upon which such notice of Force Majeure was provided, and at monthly intervals thereafter, submit to the other Party an update of the Force Majeure event including a summary of the activities necessary for the Party to resume performance. Upon the conclusion of the Force Majeure event, the Party heretofore unable to perform shall resume performance of the

obligation previously suspended and provide notice to the other Party of when the Force Majeure event ceased.

Notwithstanding any of the foregoing provisions, neither Party shall claim Force Majeure for more than a total of one hundred eighty (180) Days during any consecutive five (5) year period during the Term of this Agreement; provided, however, that Seller may claim up to an additional one hundred eighty (180) Days of Force Majeure, during said five (5) year period, in the event of significant damage to Seller's Plant resulting from an event of Force Majeure.

10.3 Continued Payment Obligation

Any Party's obligation to make payments already due under this Agreement shall not be suspended by Force Majeure.

11. INDEMNITY

Seller shall indemnify, defend and hold Buyer and its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, attributable to or resulting from the maintenance, possession or operation of the Plant, except to the extent caused by the negligence or willful misconduct of Buyer. Without limiting the foregoing, Seller shall at Buyer's request, defend at Seller's expense any suit or proceeding brought against Buyer for any of the above-named reasons; provided that Buyer notifies Seller in writing of any such claim and promptly tenders to Seller the control and defense of any such claim with Seller's choice of counsel. Buyer shall cooperate with Seller, at Seller's expense, in defending such claim and Buyer may join in defense with counsel of its choice at its own expense. Buyer may not settle any such claim without Seller's prior written consent. Seller's indemnification shall not include damage and injuries occurring on Buyer's own system after the Point of Delivery, unless the damage to or injuries occurring on such system are caused by the negligence or willful misconduct of Seller.

Buyer shall indemnify, defend and hold the Seller, its officers, agents and employees harmless from any and all liability, claims, demands, costs, judgments, loss or damage, including attorney fees, resulting from damage or injuries occurring on Buyer's own system after the Point of Delivery, except to the extent caused by the negligence or willful misconduct of Seller. Without limiting the foregoing, Buyer shall at Seller's request, defend at Buyer's expense any suit or proceeding brought against Seller for any of the above-named reasons; provided that Seller notifies Buyer in writing of any such claim and promptly tenders to Buyer the control and defense of any

such claim with Buyer's choice of counsel. Seller shall cooperate with Buyer, at Buyer's expense, in defending such claim and Seller may join in defense with counsel of its choice at its own expense. Seller may not settle any such claim without Buyer's prior written consent.

12. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be referred in writing to a senior representative of each Party for resolution. If the senior representatives are unable to resolve the dispute within thirty (30) days after the date of the written notice of referral, the Parties shall submit to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (in doing so the Parties are not agreeing to use the American Arbitration Association).

The Parties shall endeavor to agree upon and appoint one person to act as sole arbitrator. The arbitration shall be conducted before a single competent and disinterested arbitrator in accordance with the Commercial Rules of the American Arbitration Association. Such arbitrator shall have professional experience in energy related transactions, shall not be, or have previously been, employed by either Party, nor have a direct or indirect interest in either Party or the subject matter of the arbitration.

Such arbitration shall be held at any mutually agreed upon location. The award of the arbitration shall be final and binding on the Parties, the Parties shall abide by the award and perform in accordance with the terms and conditions of the award, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

At all times, pending the resolution of any disagreement, the Parties shall continue to perform their obligations pursuant to this Agreement.

13. CHANGES IN LAW

In the event that there is a change in Applicable Law, or in the event MISO ceases or modifies its operation or rules such that such modifications have a material effect on this Agreement or either Party's ability to perform hereunder, then Seller and Buyer shall amend this Agreement or enter into other agreements reasonable necessary to preserve and maintain the business agreement between the Parties described herein as of the Effective Date and the material terms and provisions of such relationship contemplated herein.

14. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties. This Agreement shall not be assigned by a Party without the other Party's prior written consent, which consent shall not be unreasonably conditioned, delayed or withheld, but provided that any assignee shall expressly assume assignor's obligations under this Agreement. Any attempted assignment or transfer without such consent shall be void and not merely voidable. Notwithstanding the foregoing, and provided that Seller is not relieved of liability hereunder, Seller shall not require Buyer's consent for assignment of this Agreement to an affiliate of Seller provided that such affiliate's creditworthiness (as determined by Buyer in Buyer's sole discretion) is equal to or higher than that of Seller.

If it is necessary for Seller to assign this Agreement in connection with any loan, lease or other financing arrangement for the Plant, Buyer shall enter into a collateral assignment of this Agreement with Seller and its lenders.

15. GOVERNING LAW

This Agreement shall be deemed to be a Michigan contract and shall be construed in accordance with and governed by the laws of Michigan, without regard to principles of conflicts of law.

16. HEADINGS

The various headings set forth in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

17. NOTICE TO PARTIES

Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be effective if it is in writing and delivered personally, by certified mail (postage prepaid and return receipt requested), reputable overnight delivery service, or other confirmable form of electronic delivery to the address set forth in Part I or to such other address as the receiving Party may designate in writing. Any time-sensitive communications regarding Emergencies or other operational issues of the Project or Buyer's distribution system, either required by this Agreement or otherwise appropriate, shall also be made promptly by phone to the following representatives for each Party:

Seller: Roy Davis at 616-318-4191

Buyer: City Manager at 517-525-8258

18. WAIVER

The entry into this Agreement shall not be deemed to constitute a waiver by either Party of its previous positions or claims with respect to matters not directly addressed herein. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether express or implied, shall not constitute a continuing waiver of, or consent to, or excuse any subsequent or different breach, nor in any way affect the validity of this Agreement or any part of it, or the right of any Party to thereafter enforce any provision of this Agreement.

19. NONSEVERABILITY

If any essential provision of this Agreement is declared invalid in whole or in part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then a Party adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party thirty (30) days' notice of such termination. Concurrently with, and as a condition of, termination of this Agreement, the Parties shall enter into good faith negotiations to amend this Agreement to remedy the invalidated provision(s) or enter into a new agreement that reasonably preserves the rights, obligations and economic positions of the Parties under this Agreement in light of the invalidated provision(s). If the Parties cannot reach an agreement, they shall submit any disputed matters to arbitration for binding resolution. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right of termination.

20. MISCELLANEOUS

20.1 No Third-Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

20.2 Disclaimer of Joint Venture, Partnership and Agency

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

20.3 Entire Agreement and Amendments

This Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties or their representatives and constitutes the entire agreement of the Parties concerning the subject matter of this Agreement. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

20.4 Counterparts and Electronic Documents

This Agreement may be executed and delivered in counterparts, including by a facsimile or an electronic transmission thereof, each of which shall be deemed an original. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.



Pamela Colestock – Mayor
William Steele – Mayor Pro Tem
Suzanne Politza – Councilwoman
Stacey Robison – Council-at-Large
Ken Nicholas – Councilman

200 S. Main Street
Eaton Rapids, MI 48827
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Yvonne Ridge – City Manager
Laura Boomer – City Clerk
Larry Joe Weeks – Police Chief
Roger McNutt – Fire Chief
Marrie Jo Carr – Treasurer
LeRoy Hummel – Building Official
Rob Pierce – Public Works/Utilities Director
Randy Jewell – City Assessor
**Corey Cagle – Director of Parks,
Recreation & Events**

MEETING DATE: 10/12/2022

CITY MANAGER

To: Mayor and City Council ☒ Work Session
From: Yvonne Ridge, City Manager & Cullen Harkness, City Attorney ☐ Regular Meeting
Submitted: 10/19/2022
Subject: Employee Agreement Template

SUMMARY

To create an employment agreement template to provide consistency with staff. The employment agreement template was developed by Attorney Harkness, Attorney Wolf and City Manager Ridge. The template will be used for future hires as well as current staff. Current employees' retirement will not change from what they are presently enrolled.

STAFF RECOMMENDATION/MOTION

Discussion and Feedback

LIST OF SUPPORTING DOCUMENTS

Employee Agreement Template Draft

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of ____ 20__, by and between the City of Eaton Rapids, State of Michigan, a Municipal Corporation, hereinafter called "City", and _____, hereinafter called "Employee", both of whom understand as follows:

WITNESS:

WHEREAS, the City Manager has been empowered to appoint and remove all employees and officers who have been provided for by the Council, including the Department of _____; and

WHEREAS, the City, through the City Manager, desires to employ the services of _____, as the _____; and

WHEREAS, it is the desire of the City to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, it is the desire of the City to:

1. Secure and retain the services of the Employee and to provide inducement for him/her to remain in such employment;
2. To make possible full work productivity by assuring the Employee's morale and peace of mind with respect to certainty of employment conditions;

3. To act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee;

4. To provide a means for termination of the Employee's service, at such time as the Employee may be unable to fully discharge his/her duties due to disability, or when the City may otherwise desire to terminate the Employee's employment; and

WHEREAS _____ desires to accept employment as the _____;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. DUTIES.

The City of Eaton Rapids hereby agrees to employ _____ as the _____, to perform the functions and duties of the office as set forth in the job description for said position attached and made a part hereto and fully incorporated by reference, and to perform other legally permissible duties and functions as the City Manager or his or her designated representative shall assign. The Employee shall devote his/her full attention and effort to the office, and perform the aforementioned duties and functions in a professional manner.

Section 2. STATUS AND TERM.

(a) The Employee shall serve at the pleasure of the City Manager, and is an at-will and non-union employee of the City. The parties herein agree that the effective date

of this agreement Shall be _____ and the end date of this agreement _____. This agreement may be renewed upon mutual agreement of the parties.

(b) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Manager to terminate the employment of the Employee at any time.

(c) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his/her position with the City, subject only to the provisions set forth in Section 4, paragraph (d), of this Agreement.

(d) The Employee agrees to remain in the exclusive employment of the City for the term of this Agreement, and shall neither accept other employment nor become employed by any other employer without the prior written approval of the City Manager until notice of resignation is given.

The term “employed” shall include employment by another legal entity or self-employment; however, it shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on the Employee’s time off. Prior written notification of these activities shall be given to the City Manager.

Section 3. ADMINISTRATIVE LEAVE.

The City Manager may place the Employee on Administrative Leave, with or without full pay and benefits, at any time during the term of this Agreement.

Section 4. TERMINATION AND SEVERANCE PAY.

(a) Termination for Cause: The City may terminate the employment of the Employee with cause, at any time and without severance, if the City Manager determines, that the Employee has done any of the following:

- 1) Been found guilty, pled guilty, pled no contest, or otherwise convicted of any criminal or administrative law of any state, municipality, or the federal government,
- 2) Engaged in a willful violation of one or more City of Eaton Rapids policies which have been formalized in a written manual, document, booklet, contract, collective bargaining agreement, or resolution, or
- 3) Engaged in gross negligence of the Employee's duties

(b) Except as provided in Section 4, subsection (a) above, in the event the City Manager terminates the employment of the Employee, during such time that Employee is willing and able to perform the Employee's duties under this agreement, then the City shall pay to the Employee a severance package as stated in Section 4, subsection (c) subject to the full release detailed in Section 4, subsection (d).

(c) In the event the City Manager terminates the employment of the Employee and he or she is capable of performing his or her work duties, then the City shall pay to the Employee a severance payment equal to salary payments which the Employee would have received over a ____ (____) week period at his/her current rate of pay, in effect on the day prior to the date of termination. No other or additional benefits shall be provided upon termination of the Employee.

(d) The severance pay set forth in Section 4(a) is conditioned upon the Employee executing to the City a full release from liability from any known or unknown causes of action against the City, including but not limited to any and all claims under any statutory or common law theory, including all claims under the Elliot-Larsen Civil Rights Act, the Handicapper's Civil Rights Act, the Bullard-Plawecki Employee

Right to Know Act, the Whistleblower's Protection Act, and the Americans with Disabilities Act, in addition to claims alleging wrongful discharge, retaliatory discharge, age discrimination, sex discrimination, racial discrimination, discrimination for utilizing rights under the Workers' Disability Compensation Act, and any other claims. The Employee's severance pay is consideration for the release.

(c)

(e) In the event the Employee voluntarily resigns his or her position, the Employee shall give the City written notice at least four (4) weeks prior to their last workday, unless the City Manager and Employee otherwise agree. If Employee provides at least four (4) weeks notice as described in this section, Employee shall be entitled to a payout of Employee's unused sick, administrative, and vacation time. This payout shall be contingent on Employee executing a full release of liability as described in Section 4(b) above. Unless there is an agreement to the contrary, if the Employee fails to provide such notice to the City Manager any right to accrued benefits shall be terminated.

(f) It is understood that after notice of termination in any form, the Employee and the City will cooperate to provide for an orderly transition. Specific responsibilities during such a transition may be specified in a written separation agreement.

Section 5. DISABILITY.

The City will provide a program of disability benefits for the loss of wages not covered by any other insurance program. When injury, illness, or disease prevents an

employee from pursuing their usual work for five (5) consecutive work days, the City will pay benefits as follows:

- i. The equivalent of two (2) weeks full salary, followed by eleven (11) weeks of half salary if the employee has completed at least one (1) year of service;
- ii. The equivalent of four (4) weeks full salary, followed by nine (9) weeks of half salary if the employee has completed at least two (2) years of service;
- iii. The equivalent of seven (7) weeks full salary, followed by six (6) weeks of half salary if the employee has completed at least three (3) years of service;
- iv. The equivalent of ten (10) weeks full salary, followed by three (3) weeks of half salary if the employee has completed at least four (4) years of service;
- v. The equivalent of thirteen (13) weeks full salary, followed by thirty-nine (39) weeks of half salary if the employee has completed at least five (5) years of service;

Payment of the disability benefit referenced herein shall commence following the sixth (6th) consecutive day of absence from work. Written notice of injury, illness, or disease must be provided to the City. Payment of the disability benefit shall be at the same time and intervals as regular payroll payments to other City employees. Employee shall be required, upon commencement of receipt of disability benefits to provide the City with a physician's statement as to an expected return to work date with any restrictions. The Employee shall keep the City informed as to any changes in the expected return to work date.

Section 6. PERFORMANCE EVALUATION.

The City Manager shall review and evaluate, in writing, the performance of the Employee after six months and thereafter on a regular basis. This review and evaluation shall be in accordance with specific criteria outlined in the Employee's job description. Said criteria may be added or deleted as the City Manager determines. This evaluation process shall not be construed to change this "at will" employment contract to a "just cause" employment contract, and is for gauging professional development only. The City Manager shall complete an initial review following _____ (__) months of the _____'s employment with the City.

Section 7. SALARY.

The City agrees to pay the Employee for his or her services rendered pursuant hereto at the rate of _____ (\$_____) dollars per year. The Employee shall be paid at the same intervals as all other City employees. The Employee may be eligible for salary increase in the sole discretion of the City manager, contingent upon successful completion of a performance evaluation and the receipt of a satisfactory rating. Thereafter, the Employee, based upon satisfactory performance of her job functions, may receive annual increases effective with the general salary increases and other enhancements for non-union personnel.

Section 8. PROFESSIONAL DEVELOPMENT.

The Employee may receive paid leave, plus registration, travel, and reasonable expenses, for short courses, conferences, and seminars that are necessary for professional development, and which are for the good of the City, as judged by the City

Manager. These benefits are subject to budget limitations and established travel policies, as well as procedures of the City.

Section 9. OTHER BENEFITS.

All applicable benefit provisions of the City of Eaton Rapids Employee Handbook for full-time employees, and subsequent amendments, shall apply to the Employee as they would to other employees of the City, except as the terms and conditions of this Agreement may preclude or modify them.

(a) The Employee shall be provided vacation time as follows:

- i. Start of employment: two (2) weeks per year;
- ii. After (5) years of employment: three (3) weeks per year;
- iii. After (12) years of employment: four (4) weeks per year;
- iv. Vacation time shall be prorated at the time of Employee's start date and shall thereafter be credited each January based on the completion of the required years of service, following the Employee's eligibility.
- v. Employee may carry over each year up to one-half (1/2) of their vacation time into the next year or opt to have said vacation time paid out at the end of that year.
- vi. Annual vacation accrual is capped at the Employee's current year earned vacation plus one-half (1/2) of the previous year's earned vacation. No additional vacation time may be carried over if the Employee's vacation bank is at the capped amount.

(b) The Employee shall participate in the City of Eaton Rapids MERS Defined Contribution Plan into which the City will contribute eight (8%) percent of Employee's salary and the Employee shall contribute five (5%) percent of Employee's pretax salary.

(c) The Employee shall receive five (5) sick days per calendar year. Sick leave shall be prorated for new hires based upon the date of their start of employment with the City and thereafter be credited each January. ~~The Employee may opt to receive a pay-out of unused accumulated sick days at the end of each calendar year.~~ If Employee has accumulated at least one hundred sixty (160) hours of sick time by November 30 of each year, any unused hours accumulated in excess of one hundred sixty (160) hours shall be paid out to the Employee in the first pay period each December.

(d) Employee shall receive five (5) personal days per calendar year. Personal leave shall be prorated for new hires based upon the date of their start of employment with the City and thereafter be credited each January. The employee may opt to receive a pay-out of unused accumulated personal days at the end of each calendar year.

(e)

(f) In addition to the paid time off for sick and vacation time described herein, Employee shall receive forty (40) hours of administrative time per year in January of each year. Administrative leave shall be prorated for new hires based upon the date of their start of employment with the City. Administrative time shall not carry over to a subsequent year and Employee shall not be entitled to any payout for any unused administrative time.

(g) After five (5) years of service, Employee shall receive a two hundred fifty (\$250.00) dollar longevity bonus to be paid at the first pay period in the month of

December following Employee's five (5) year anniversary. Longevity payments shall increase by fifty (\$50.00) dollars for each additional year of service with a maximum cap of one thousand (\$1,000.00) dollars. Longevity payments shall be gross payments.

(h) The City agrees to provide term life insurance in an amount of up to one hundred thousand (\$100,000.00) dollars, should Employee elect to receive term life insurance through the City.

(i) The City will contribute one hundred (\$100.00) dollars per month of service to a Health Care Savings Program sponsored by MERS. The contributions to this program shall be made available to Employee upon Employee's termination of employment with the City for future health insurance premium costs.

(j) The City shall provide Employee with medical insurance in compliance with Public Act 152 of 2011. In compliance with Public Act 152 of 2011, the cost of health insurance premiums will be paid eighty (80%) percent by the City and twenty (20%) percent by Employee. The City shall also provide dental and vision insurance to Employee if Employee enrolls in the City's medical insurance.

Employee may, on an annual basis, elect to waive medical coverage for a monthly cash payment of three hundred (\$300.00) dollars per month, if Employee provides City with proof that Employee is otherwise covered by medical insurance. The cash payment under this sub-section is a gross payment and employee remains solely responsible for the payment of any and all local, state, or federal taxes. Employee may re-enroll in the City's medical insurance plan immediately if Employee loses other medical coverage, subject to any pre-existing conditions that might apply.

(k) Employee may be entitled to set, subject to the ultimate control of the City Manager, a flexible work week hourly schedule.

Section 10. RESIDENCY.

The Employee shall be required to live within twenty (20) miles of the City limits. Employee shall move within the City limits within six (6) months of the commencement of this agreement. These provisions may be waived and/or extended in the sole discretion of the City Manager.

Section 11. FINANCIAL DISCLOSURE.

The Employee shall report to the City Manager any ownership interest in real property within the City of Eaton Rapids, excluding his or her personal residence. Also, the Employee shall report to the City Manager any financial interest greater than one thousand (\$1,000.00) dollars in value in any firm presently doing work for the City, or from whom the City intends to make a purchase. Such reporting shall be made in writing by the Employee within thirty (30) calendar days of the execution of this agreement, and further within thirty (30) calendar days of acquisition of said interest in real property. Additionally, the Employee shall report, in writing, to the City Manager any financial interest greater than \$1,000 in value in any future firm doing work for the City, or from whom the City intends to make a purchase, immediately upon notice of the intended work or purchase.

Section 12. IDEMNIFICATION.

The City shall defend, hold harmless, and indemnify the Employee against any action, including but not limited to: any tort, professional liability claim or demand, or any other noncriminal legal, equitable, or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Employee's duties as an employee or officer of the City, other than an action brought by the City against the Employee, or an action filed against the Employee. The City shall be responsible for and have authority to compromise and settle an action with or without prior consultation with the Employee, and pay the amount of any settlement or judgment rendered thereon.

The Employee shall cooperate fully with the City in the settlement, compromise, preparation of defense, or trial of any such action.

Section 13. BONDING.

The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 14. NOTICES.

Notices pursuant to this Agreement shall be considered given by depositing into the custody of the United States Postal Service certified mail, postage prepaid, addressed to the City Manager's Office, 200 S. Main St., Eaton Rapids, Michigan 48823, and to the Employee's home address, on file in the Human Resources Department. Alternatively, notice required pursuant to this Agreement may be personally served or served in the same manner as is applicable to civil suits in the State of Michigan. Notice shall be

deemed given as of the date of personal service, or as of the date of deposit of such written notice into the course of transmission in the United States Postal Service.

Section 15. GENERAL PROVISIONS.

- (a) The text herein shall constitute the entire Agreement between the parties.
- (b) This Agreement shall become effective commencing on the day of its signing by both parties.
- (c) If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, and shall not be affected and shall remain in full force and effect.
- (d) This Agreement is to be construed in under the law of the State of Michigan.
- (e) Any and all disputes, lawsuits, or litigation arising out of this agreement shall be brought in the 56A District Court or the 56th Circuit Court, for the County of Eaton, State of Michigan, whichever Court has proper jurisdiction.
- (f) No amendment of this Agreement shall be effective unless in writing and signed by both parties hereto.
- (g) The effective date of this agreement is _____;

IN WITNESS WHEREOF, THE CITY OF EATON RAPIDS has caused this Agreement to be signed and executed on its behalf by its City Manager, _____

and duly attested by its City Clerk, _____ and approved by its City Attorney,
_____, and _____, the Employee has signed and executed
this Agreement, both in duplicate the day and year first above written.

THE CITY OF EATON RAPIDS:

_____/
By: _____
City Manager

_____/
By: _____
Employee

ATTEST:

APPROVED AS TO FORM:

_____/
By: _____
City Clerk

_____/
By: _____, City Attorney