

# CITY OF MUSKEGON

## CITY COMMISSION WORKSESSION

**October 13, 2025 @ 5:30 PM**

**MUSKEGON CITY COMMISSION CHAMBERS  
933 TERRACE STREET, MUSKEGON, MI 49440**

- CALL TO ORDER:**
- NEW BUSINESS:**
  - A. Ordinance Adoption: Unlawful Speed Exhibition Events Public Safety**
  - B. Project Development Agreement with Johnson Controls, Inc. Public Works**
- PUBLIC COMMENT:**
- ADJOURNMENT:**

### **AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE CITY OF MUSKEGON AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES**

To give comment on a live-streamed meeting the city will provide a call-in telephone number to the public to be able to call and give comment. For a public meeting that is not live-streamed, and which a citizen would like to watch and give comment, they must contact the City Clerk's Office with at least a two-business day notice. The participant will then receive a zoom link which will allow them to watch live and give comment. Contact information is below. For more details, please visit:

[www.shorelinecity.com](http://www.shorelinecity.com)

The City of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting with twenty-four (24) hours' notice to the City of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the City of Muskegon by writing or by calling the following:

Ann Marie Meisch, MMC. City Clerk. 933 Terrace St. Muskegon, MI 49440. (231)724-6705.  
[clerk@shorelinecity.com](mailto:clerk@shorelinecity.com)



# Agenda Item Review Form

## Muskegon City Commission

<b>Commission Meeting Date:</b> October 13, 2025	<b>Title:</b> Ordinance Adoption: Unlawful Speed Exhibition Events				
<b>Submitted by:</b> Timothy Kozal, Public Safety Director	<b>Department:</b> Public Safety				
<p><b>Brief Summary:</b>          The City of Muskegon Police Department requests consideration to adopt an ordinance to address the rise in unauthorized vehicle speed exhibitions—commonly known as “street takeovers”—which threaten public safety, disrupt neighborhoods, and damage infrastructure, by enhancing enforcement and providing progressive responses such as impoundment authority and advance notice procedures.</p>					
<p><b>Detailed Summary &amp; Background:</b>          The City of Muskegon finds that unauthorized motor vehicle speed exhibition events—commonly known as “street takeovers,” “sideshows,” or “slideshowes”—pose a serious threat to public safety, disrupt neighborhoods, damage infrastructure, and endanger motorists, pedestrians, and first responders. Events like these have been an issue in other communities, like Grand Rapids and Kalamazoo, and the police department has seen an uptick in these events in Muskegon. This ordinance is adopted to deter such behavior, enhance enforcement options, and provide for progressive administrative response through impoundment authority and advance notice procedures.</p>					
<p><b>Goal/Action Item:</b>          2027 Goal 1: Destination Community &amp; Quality of Life</p>					
<p><b>Is this a repeat item?:</b>  <b>Explain what change has been made to justify bringing it back to Commission:</b></p>					
<p><b>Amount Requested:</b>          N/A</p>	<p><b>Budgeted Item:</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Yes</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	Yes	No	N/A	<input checked="" type="checkbox"/>
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<p><b>Fund(s) or Account(s):</b>          N/A</p>	<p><b>Budget Amendment Needed:</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Yes</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	Yes	No	N/A	<input checked="" type="checkbox"/>
Yes	No	N/A	<input checked="" type="checkbox"/>		
<p><b>Recommended Motion:</b>          I move to adopt Chapter 92, Article VIII, Sections 92-500 through 92- 504 of the Code of Ordinances of the City of Muskegon, Michigan to deter unauthorized speed exhibitions.</p>					
<b>Approvals:</b>	<b>Name the Policy/Ordinance Followed:</b>				

Immediate Division Head	█	
Information Technology		
Other Division Heads		
Communication		
Legal Review	█	

**City of Muskegon  
Muskegon County, Michigan  
Ordinance Amendment No. \_\_\_\_\_**

THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 92, Article VIII, Sections 92-500 through 92- 504 of the Code of Ordinances of the City of Muskegon, Michigan, is adopted as follows:

**Sec. 92-500. Purpose.**

The City of Muskegon finds that unauthorized motor vehicle speed exhibition events—commonly known as “street takeovers,” “sideshows,” or “slideshows”—pose a serious threat to public safety, disrupt neighborhoods, damage infrastructure, and endanger motorists, pedestrians, and first responders. This ordinance is adopted to deter such behavior, enhance enforcement options, and provide for progressive administrative response through impoundment authority and advance notice procedures.

**Sec. 92- 501 Definitions.**

For purposes of this Article:

(a) *Unlawful Speed Exhibition Event* means any unpermitted motor vehicle activity on a public roadway, highway, alley, bridge, parking lot, or other publicly accessible space that:

- (1) May be preplanned or contemporaneously coordinated by two or more persons;
- (2) Involves spinning of tires, burnouts, “donuts,” drifting, or the creation of tire smoke;
- (3) Involves rapid acceleration or deceleration intended to create noise, disruptions to traffic operations, nuisance to the public, and/or attention;
- (4) Involves excessive speed or street racing;
- (5) Involves any other motor vehicle maneuvers performed recklessly or for the purpose of entertainment, stunt driving, or show; or
- (6) Involves a person knowingly using or aiding a motor vehicle or other obstacle to create a physical barrier that impedes or blocks an intersection, bridge, public right-of-way, or other public place or highway, thereby creating a location or opportunity for a speed exhibition event to occur.

(b) *Unpermitted* means without the express written permission of the owner of private property on which the activity occurs or without prior authorization from the City of Muskegon for use of public property or right-of-way.

(c) *Warning Letter* means a written notice issued to the registered owner of a vehicle, advising that the vehicle was observed to be involved in or aiding in an unlawful speed exhibition event.

**Sec. 92 502. Prohibited Conduct.**

No person shall engage in, participate in, aid in, coordinate, or facilitate an unlawful speed exhibition event as defined in this Article.

**Sec. 92- 503. Vehicle Impoundment and Warning Procedure.**

(a) A law enforcement officer who has reasonable suspicion to believe a motor vehicle is actively participating in or aiding in an unlawful speed exhibition event may issue a Warning Letter to the vehicle's registered owner within seven days of the event. The letter shall:

(1) State that the vehicle was identified in or aiding in an unlawful speed exhibition event. The Warning Letter shall identify the location, date and time, of the event. The letter shall provide the process to appeal the Notice to the Director of Public Safety;

(2) Serve as notice that any future involvement or assistance in an unlawful speed exhibit may result in immediate impoundment of the vehicle; and

(3) Remain valid for a period of one (1) year from the date of issuance.

(b) The owner of the vehicle may file a written appeal to the issuance of the Warning Letter to the Director of Public Safety. The written appeal must be submitted within 10 business days to the Director of Public Safety, along with any evidence or written statements that relate to the Warning Letter. The Director of Public Safety's decision shall be in writing and shall be final.

(c) If a vehicle is subsequently involved in or aiding in another unlawful speed exhibition event within one (1) year of a prior Warning Letter, and a law enforcement officer has probable cause to believe the vehicle was used in or aiding in the event, the law enforcement officer may cause the vehicle to be impounded.

(d) If a law enforcement officer is required to enter private property to search for and impound a vehicle that is in violation of this section, the law enforcement officer must submit a request to the district court for an order authorizing the law enforcement officer to enter said private property, unless the law enforcement officer has other legal justification for entering the property and impounding the vehicle or obtains consent from the property owner and vehicle owner.

(e) If an owner's vehicle is impounded, the owner may take ownership of the vehicle at any time so long that all towing and storage fees associated with an impoundment are paid in full. The owner of the vehicle is fully responsible for all fees associated with impoundment and storage of the vehicle.

**Sec. 92- 504. Penalties.**

(a) Any person who owns a vehicle used in an unlawful speed exhibition event in violation of this ordinance, or any person who knowingly allowed a vehicle to be used in an unlawful speed exhibition event in violation of this ordinance, or any person who failed to exercise reasonable control over the use of a vehicle involved in an unlawful speed exhibition shall be guilty of a misdemeanor, punishable by a term of imprisonment of not more than 90 days and a fine of not more than \$500.00, or both.

(b) Nothing in this Article shall be construed to impose liability or penalties on individuals who are solely spectators or bystanders.

This Ordinance Adopted:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Adoption Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

CITY OF MUSKEGON

By: \_\_\_\_\_

Ann Marie Meisch, MMC  
Clerk, City of Muskegon

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the \_\_\_\_\_ day of \_\_\_\_\_, 2025 at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to, and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be, or have been made available as required thereby.

CITY OF MUSKEGON

Published: \_\_\_\_\_, 2025

By: \_\_\_\_\_

Ann Marie Meisch, MCC  
Clerk, City of Muskegon

Publish:        Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON  
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on \_\_\_\_\_ of \_\_\_, 2025, the City Commission of the City of Muskegon adopted an amendment to Section 92- \_\_\_, summarized as follows:

1. Section 92- 500 provides the purpose for the Unlawful Speed Exhibit Events Ordinance.
2. Section 92- 501 provides the definitions for the Unlawful Speed Exhibition Event Ordinance.
3. Section 92- 502 prohibits Unlawful Speed Exhibition Event.
4. Section 92 – 503 provides a warning procedure and impoundment of vehicles involved in an Unlawful Speed Exhibition Event.
5. Section 92-504 provides the penalties for violating the Unlawful Speed Exhibition Event Ordinance.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, 49440 during regular business hours.

This ordinance amendment is effective ten (10) days from the date of this publication.

CITY OF MUSKEGON

Published: \_\_\_\_\_, 2025

By: \_\_\_\_\_  
Ann Marie Meisch, MCC  
Clerk, City of Muskegon

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PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE



# Agenda Item Review Form

## Muskegon City Commission

<b>Commission Meeting Date:</b> October 13, 2025	<b>Title:</b> Project Development Agreement with Johnson Controls, Inc.							
<b>Submitted by:</b> Dan VanderHeide, Public Works Director	<b>Department:</b> Public Works							
<b>Brief Summary:</b> Staff, together with Johnson Controls, Inc., will present the details of a Project Development Agreement that will prepare the details needed to enter into an Energy Performance Contract in 2026 to make improvements to the DPW Facility, the Water System, City Hall, and other facilities.								
<b>Detailed Summary &amp; Background:</b> In May of this year, staff issued an RFQ for an Energy Performance Contract Consultant, and the Commission agreed with staff's recommendation and awarded to Johnson Controls, Inc. (JCI). Staff recommended entering into this arrangement with goals of improving the DPW facility and making energy-saving improvements to that facility and others throughout the City. JCI has spent the last 6 months or so working with staff to identify a scope of work that fits well within the framework of an EPC, as well as makes progress on the City's needs and goals. The specific items of work proposed to be included in this Project Development Agreement (PDA), a precursor to the EPC itself, are shown on the included summary document, and are detailed in the agreement as well. One notable item is preparing for the replacement of all residential water meters in the City (that have not recently been replaced for other reasons), which is anticipated to increase water system revenue by several percent by reducing errors.  Staff and JCI will present more details on this agreement and the EPC process at the meeting.								
<b>Goal/Action Item:</b> 2027 GOAL 4: FINANCIAL INFRASTRUCTURE - Maximized efficient use of existing infrastructure								
<b>Is this a repeat item?:</b> <b>Explain what change has been made to justify bringing it back to Commission:</b>								
<b>Amount Requested:</b> For discussion only.	<b>Budgeted Item:</b> <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 25%;">Yes</td> <td style="width: 25%;"><input type="checkbox"/></td> <td style="width: 25%;">No</td> <td style="width: 25%;"><input type="checkbox"/></td> <td style="width: 25%;">N/A</td> <td style="width: 25%;"><input checked="" type="checkbox"/></td> <td style="width: 25%;"><input type="checkbox"/></td> </tr> </table>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
<b>Recommended Motion:</b> For discussion only.								

**Approvals:**

Immediate Division Head	x	
Information Technology		
Other Division Heads	x	
Communication		
Legal Review	x	

**Name the Policy/Ordinance Followed:**

## JCI Project Development Agreement

Total Deferred Cost: \$554,104

### Summary and Cost Breakdown

Water & Sewer (Funds 590, 591): \$311,781

- Test approximately 60 large meters ( $\geq 3''$ ), evaluating for repair or replacement
- Gather data and prepare for system-wide residential meter replacement
- Design the replacement of several AC units and one boiler at the Filtration Plant
- Perform remote leak detection, identifying potential locations for further investigation
- Analyze sewer manholes for inflow/infiltration, prepare for manhole lining project

DPW Facility (Fund 642): \$163,034

- Design replacement of HVAC, electric & lighting, and building envelope review
- Space planning, with preliminary design of building renovations & façade improvements
- Evaluate replacement of existing emergency backup generator

City Hall and Other (Funds 101, 594): \$79,289

- Design replacement of existing chiller plant and associated pumping at City Hall
- Perform City Hall building envelope review (windows, doors, insulation, etc.)
- At Hartshorn Marina and select parks, evaluate lighting systems for LED conversion
- At City Hall, Central Fire, cemeteries and select parks:
  - Evaluate plumbing fixtures for water-saving replacements
  - Evaluate irrigation controllers and systems for smart, water-saving designs



## PROJECT DEVELOPMENT AGREEMENT BETWEEN

**City of Muskegon (Customer)**  
1350 E. Keating Ave.  
Muskegon, MI 49442

AND

**Johnson Controls, Inc. (JCI)**  
3312 Lousma Drive SE  
Grand Rapids, MI 49548

The purpose of this Project Development Agreement (PDA) is to confirm the intent of Johnson Controls, Inc. (JCI) and the City of Muskegon (Customer) to develop an energy performance contract in accordance with Michigan enabling legislation Public Act 625 of 2012. This agreement will provide the basis of the scope of the PDA, the obligations of both parties, and the intended outcomes and timeline.

### 1. Scope of Services

It is the Parties' mutual understanding this Project Development Agreement will:

- a) Provide for the development of Business Improvement Measures (BIMs) addressing the Customer's infrastructure that will generate economic benefit in the form, not limited to, utility savings, operational savings, additional unbilled revenue and avoided capital expenditures. Where possible, JCI will assist the Customer by providing additional improvements to reduce such items as deferred maintenance backlog or desired City improvement measures not affordable otherwise. Listed herein is a list of Customer Priority BIMs. The Customer Priority BIMs are listed in priority order in terms of importance to the Customer achieving their objectives. The Customer acknowledges that the project may or may not include all the Customer Priority BIMs listed.
  1. Public works building:
    - i. Space planning & remodeling of office area
    - ii. HVAC system redesigned in office area
    - iii. HVAC equipment replacement
    - iv. HVAC equipment controls, setback office area
    - v. Lighting retro/ replace to LED
    - vi. Lighting controls / sensors
    - vii. Building Envelope OHD seals, sweeps, etc.
    - viii. Vending machine control
    - ix. Domestic water retrofits
    - x. Replace the emergency backup generator
  2. City Hall:
    - i. HVAC – Chiller & Pump replacement
    - ii. Rebalance HHW system at VFD
    - iii. Building Envelope door seals, sweeps, etc.
    - iv. Irrigation updates to controller
    - v. Domestic water retrofits
  3. Water Filtration Plant:

- i. Replace 1 Boilers & pumps with high eff. & Controls update
  - ii. Replace lab AC - undersized
  - iii. Replace IT closet AC
  - iv. Replace older R-22 AC units
4. Water Distribution:
- i. Water Meter Replacement
  - ii. Potential right sizing/right-typing of existing meters
  - iii. Other potential usage of the AMI network (remote shut-off valves)
  - iv. Customer Portal for end-users
  - v. Inventory of Lead Service Lines
  - vi. Leak detection solution
5. Sewage Collection:
- i. Select Manholes to be rehabilitated for Inflow & Infiltration (I/I) reduction.
6. Central Fire Station #3:
- i. Irrigation updates to controller
7. Cemeteries:
- i. Irrigation updates to controller
8. Hartshorn Marina:
- i. Lighting retro/ replace to LED
  - ii. Domestic water retrofits
  - iii. DHW heaters replacement
9. Select Parks in the City:
- i. Domestic water retrofits
  - ii. Irrigation updates to controller
- b) Assist the Customer in arranging for project financing.
- c) Provide details for a comprehensive water meter replacement program to include the following:
- i. Utility Billing Extract used to create the water model and determine project benefits.
    - 1. Data will be used to identify accounts that may be billed incorrectly for further investigation.
    - 2. Identify possible meter right typing candidates.
    - 3. Generate anticipated project benefits based on the billing system extract and mutually agreed-upon meter accuracy expectations for meter sizes 2" and smaller. JCI will not test any meters which are 2" or smaller in size for the purposes of determining the accuracy of existing meters.
  - ii. Large Meter Survey
    - 1. Survey and audit large water meters and settings to determine which large water meters may be tested, which large water meters are correctly typed for the current application, and which large meter settings need improvement. For the purpose of this Agreement, large water meters are defined as 1.5 or 2" compound, 1.5" or 2" turbine, 3" and larger meters. Fire line meters (meters which only serve fire services and do not provide domestic water supply) shall be excluded from the survey. The quantities to be surveyed are as follows per information that was received from the customer during our preliminary analysis:  
Meters size, Known quantity

- a. 1.5" (0)
- b. 2" (0)
- c. 3" (37)
- d. 4" (38)
- e. 6" (12)
- f. 8" (1)
- g. 10" and larger (1)

If additional quantities of large water meters are found, JCI may request a change order to this Agreement.

2. JCI may request that the Customer's staff to provide and install water isolation valves at certain locations for the purpose of testing the water meter at that facility.
3. JCI requires that the Customer provide an escort during the large meter survey and testing.

iii. Large Meter Testing

1. JCI shall attempt to test up to sixty (60) large water meters in the Customer's system assuming that the large meter survey finds sixty (60) meters that are able to be tested. In order for a large meter to be a candidate for large meter testing, the following criteria must be met:
  - a. A working inlet valve
  - b. A working outlet valve
  - c. An accessible test port or backflow device
  - d. The ability to isolate the meter so that no flow shall pass through the meter during large meter testing efforts
  - e. The ability to temporarily shut down water service to the existing customer unless there is an existing bypass which can be opened and utilized during our large meter testing efforts

If JCI does not find sixty (60) large meters that are able to be tested during the large meter survey, JCI shall test the maximum number of large meters that are possible to test.

2. Large water meter testing requires coordination with both the Customer and the end user. Customer shall be responsible for scheduling large meter tests with the owners of meters which are selected for testing.
3. If a water meter isolation valve has failed, JCI may request the Customer to replace that valve. **JCI requests that the Customer exercise the large water meter isolation valves prior to the start of large water meter testing.**
4. If a large water meter is tested and found not to meet the AWWA M6 Manual New Meter Accuracy Standard of 100% +/- 1.5%, and if repair parts for this meter are readily available, JCI will inform the Customer and request permission to repair the meter while the large meter testing crew is on site. JCI will provide the Customer with an estimate of the cost to repair the meter (parts and labor) at that time. Once the repairs have been completed, JCI will re-test the water meter to verify that the accuracy of the meter has been restored. At the end of the meter testing effort, JCI will submit a detailed change order to the existing Project Development Agreement (PDA) between the Customer and JCI for the cost of repairing any inaccurate large water meters.

iv. Customer shall furnish to JCI, upon its request, the following information:

1. A billing system data extract. Billing and consumption information shall be provided for each account and shall be in a Tab or pipe delimited format with the first line of the file being a header line to denote the data in each column. Comma delimited can be used if commas are not used in the Actual Field Data as this causes import issues. JCI requires a minimum 24 months of data which shall include the Customer’s preferred base year for the project (i.e. a year that is considered by the Customer to demonstrate “typical” and “repeatable” consumption). This file should include Water, Sewer, Reclaim, and Irrigation accounts. If any meters are non-revenue meters and do not have a separate rate code, please identify them in a separate list. Also, please identify any Sewer Only Accounts.

*Note: The script or report used to provide this data extract should be available on an ongoing basis, so that this data format can be requested and delivered for monthly/quarterly analysis, for whatever period the data is needed.*

See Appendix A for detailed Information that is requested for each account

2. Descriptions of any changes in the utility infrastructure or any of its operating systems.
3. Water quality test results.
4. All operational cost records for relevant (Customer) infrastructure and services that will be impacted by the project.
5. Descriptions of relevant operational or maintenance procedures utilized by (Customer).
6. Copies of available historical water audits.
7. List and location of manholes rated as Risk of Failure 5-Highest per the 2017 Manhole Condition (Customer) Survey , clarifying any manholes that should be removed from the audit and reason (e.g. already rehabilitation, demolition scheduled)
8. Traffic control as needed for I&I survey
9. Any other pertinent information as requested by JCI, if any.

## 2. Development Schedule

It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others to work diligently under their direction to achieve the Milestone Schedule identified herein:

Milestone*	Completion Date
JCI provides PDA	09.11.25
Execution of PDA	09.19.25
JCI Commences on-site work	09.22.25
JCI performs M&V workshop #1	09.22.25
Water Meter Workshop, portal, remote disconnect	09.22.25
JCI Receives complete database extract	09.26.25
JCI detailed site surveys commence	09.29.25

Manhole Rehab kick off	10.01.25
Lighting Survey	10.03.25
Manhole Rehab survey	10.06.25
A&E workshop on refurbishment scope	10.06.25
Onsite Large Meter Audit	10.07.25
On site measurements & loggers data gathering for HVAC	10.10.25
Mechanical, controls scope surveys, building envelope & water retrofit surveys onsite	10.17.25
JCI Present Preliminary go/no go scope review	11.07.25
JCI to complete meter testing program	12.8-19.25
JCI perform M&V workshop #2	01.16.26
Workshop with City to discuss final project	02.13.26
Legal Review of City Completion	02.20.26
Presentation to City Officials	02.27.26
Contract Approval and execution	March 2026

*\*These milestones may be modified by subsequent work plans mutually agreed upon by both parties.*

### 3. Deliverables

Upon completion of the project development, JCI shall deliver to the Customer:

- a) A written description of each BIM proposed to be implemented. A list of the specific improvements and operational efficiency measures that JCI proposes.
  - i. A projection of potential cost savings
  - ii. An estimate of the inflow and infiltration reduction resulting from manhole rehabilitation project; (for purposes of this study, we will use an agreed upon infiltration rate). Parties will mutually agree to baseline. Inflow and infiltration flow into manholes will not be tested pre and post retrofit.
  - iii. An estimate of the improved system accuracy and resulting increased billable revenues; (for purposes of this study, we will use an agreed upon, meter accuracy, baseline, and tier structure). Parties will mutually agree to small and intermediate meter baseline and accuracy gains. These will not be sampled or tested.
  - iv. A projection of improved system accuracy and resulting billable revenues for large water meters that are tested as part of project development along with accuracy results from those testing efforts.
  - v. A summary of the cost required to realize the proposed improvements.
- b) A formal offer in the form of a guaranteed savings contract to execute the project (see Paragraph 6: Implementation Agreement).
- c) A financial pro forma cash flow documenting the proposed project. The pro forma will include applicable annual costs and benefits that affect the project outcome such as financing, energy, water, sewer, labor, maintenance, and any added capital contributions.
- d) A preliminary schedule for implementation of the project.

- e) A summary of the Measurement & Verification plan, including proposed IPMV protocols, such as Option A, B, C, or D that will be used for each BIM.

JCI in its Scope of Services under this Agreement takes no responsibility for: (i) increasing the capacity of backup or emergency power supplies; (ii) identification or remedy of any existing noncompliance; (iii) evaluation and/or design of improvements necessary to address (A) conditions not identified or accounted, or (B) emerging contaminants in solids, including but not limited to, pharmaceuticals, microplastics, and per- and polyfluoralky substances (PFAS) ("Emerging Contaminants"); and (iv) the handling, disposal or removal of hazardous substances or Emerging Contaminants in equipment, materials, or the environment, provided, however, that nothing in this paragraph shall limit JCI's liability for its negligence or willful misconduct, or failure to perform its expressly assumed obligations under this Agreement in accordance with applicable professional standards.

#### 4. Customer Priority BIMs

This section left blank intentionally.

#### 5. Records and Data

During the project development, the Customer will furnish to JCI upon its request, accurate and complete data concerning current: system performance data if available; costs; facilities requirements; future projected loads; system operating requirements; collective bargaining agreements; etc.

JCI will provide a separate document with a formal request for the required information shortly commencing onsite activities. The Customer shall make every effort to provide that information within 5 days of request.

#### 6. Preparation of Implementation Agreement

JCI will develop the framework of the subsequent Implementation Agreement and the Financing Agreement if applicable. JCI and Customer shall work diligently during the project development to complete and populate contract documents. The form of the documents will vary depending on Customer requirements, state statute where applicable and JCI requirements, but where prudent shall utilize JCI standard documents.

#### 7. Project Development Cost and Payment Terms

Customer agrees to the cost for JCI to provide project development services identified here in is **\$554,104** (Five hundred fifty-four thousand, one hundred and four dollars) and is payable within **60** days after JCI provides the Deliverables identified herein.

Commented [DV1]: To match 60 day decision timeframe in next paragraph.

However, Customer will have no obligation to pay this amount if JCI and the Customer enter into the Implementation Agreement (outlined in Paragraph 6) within 60 days after JCI provides the Deliverables. Costs for project development will be transferred to the total cost of the implementation Contract and be subject to the payment terms outlined in the Contract.

Obligation to pay if JCI satisfies requirements - Customer shall pay the amount indicated if JCI satisfies the requirements set forth in Paragraph 3 "Deliverables" and the Customer elects not to implement a project with JCI.

Obligations of Customer - To work with JCI in a diligent and timely manner according to the co-authored Timeline to

City of Muskegon PDA rev2.docx

develop the engineering study. Provide open disclosure of information required to do an accurate assessment and properly position JCI with any other pertinent data to insure a cooperative and successful effort. Failure of the Customer to meet the agreed upon milestones in Section 2 "Development Schedule" does not void JCI's claim on the PDA cost.

**8. Insurance and Indemnity**

JCI shall maintain insurance in the amounts set forth below in full force and effect at all times until the PDA scope of work has been completed and shall provide a certificate evidencing such coverage promptly following Customer's request therefor. Customer shall be named an additional insured as to the CGL coverage.

COVERAGES	LIMITS OF LIABILITY
Workmen's Compensation Insurance or self-insurance, including Employer's Liability	Statutory
Commercial General Liability Insurance	\$5,000,000 Per Occurrence \$5,000,000 Aggregate
Comprehensive Automobile Liability Insurance	\$5,000,000 Combined Single Limit
The above limits may be obtained through primary and excess policies and may be subject to self-insured retentions.	

Neither JCI nor the Customer will be responsible to the other for any special, indirect, or consequential damages. JCI's liability under this agreement, regardless of the form of action, shall in no event exceed the amount of JCI's cost to provide project development services under Paragraph 7 (Project Development Cost and Payment Terms).

**9. Disputes**

If a dispute arises under this Agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. All disputes not resolved by negotiation shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at the time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the parties. Judgment may be entered upon the award in the highest State or Federal court having jurisdiction over the matter. The prevailing party shall recover all costs, including attorney's fees, incurred as a result of this dispute.

**10. Confidentiality**

This agreement creates a confidential relationship between JCI and Customer. Both parties acknowledge that while performing this Agreement, each will have access to confidential information, including but not limited to systems, services or planned services, suppliers, data, financial information, computer software, processes, methods, knowledge, ideas, marketing promotions, current or planned activities, research, development, and other information relating to the other party ("Proprietary Information"). Except as authorized in writing both parties agree to keep all Proprietary Information confidential. JCI may only make copies of Proprietary Information necessary for performing its services. Upon cessation of services, termination, or expiration of this Agreement, or upon either party's request, whichever is earlier, both parties will return all such information and all documents, data and other materials in their control that contain or relate to such Proprietary Information. The parties stipulate that this agreement does not supersede laws and regulations that require the Customer to maintain or disclose certain information due to the Customer's status as a

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municipal corporation incorporated in the state of Michigan.

JCI and Customer understand that this is a confidential project and agree to keep and maintain confidentiality regarding its undertaking of this project. JCI shall coordinate its services only through the designated Customer representative and shall provide information regarding this project to only those persons approved by Customer. JCI will be notified in writing of any changes in the designated Customer representative.

**11. Miscellaneous Provisions**

Any evaluation or implementation of disinfection or related technology is intended to be used as a tool for helping Customer manage its response to the unknown and challenging environment in which Customer is working to address the unprecedented COVID-19 pandemic, or to be prepared for future outbreaks of COVID-19 or other pandemics. JCI cannot guarantee that the products provided will prevent the spread of COVID-19 or any other disease or keep any person safe. JCI EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE PRODUCTS WILL ELIMINATE, PREVENT, TREAT OR MITIGATE THE SPREAD, TRANSMISSION, OR OUTBREAK OF COVID-19 OR ANY OTHER PATHODEN, DISEASE, VIRUS, OR OTHER CONTAGION.

This Agreement cannot be assigned by either party without the prior written consent of the other party. This Agreement is the entire Agreement between JCI and the Customer and supersedes any prior oral understandings, written agreements, proposals, or other communications between JCI and the Customer. Any change or modification to this Agreement will not be effective unless made in writing. This written instrument must specifically indicate that it is an amendment, change, or modification to this Agreement.

This document represents the business intent of both parties and should be executed by the parties who would ultimately be signatory to a final agreement.

JOHNSON CONTROLS, INC.	CITY OF MUSKEGON
<b>By</b> Bradford G. Estadt	<b>By</b>
<b>Signature</b>	<b>Signature</b>
<b>Title</b> General Manager – Sustainable Infrastructure	<b>Title</b>
<b>Date</b>	<b>Date</b>

Appendix A:

Information requested for each account:

- Municipality
- Account Number
- Account Sequence - (optional and if applicable)
- Meter Sequence - (optional and if applicable)
- Cycle Code - (optional and if applicable)
- Route Code - (optional and if applicable)
- Sequence - (optional and if applicable)
- Latitude - (optional and if applicable)
- Longitude - (optional and if applicable)
- Customer Name (optional but highly recommended)
- Service Address (location of the Meter)
- Billing Address (if different than the Service Address)
- Zip Code
- Account Status (Active, Inactive, etc.)
- Date of last Status Change (when account become inactive. If Possible)
- Service Class (Water, Irrigation, Sewer)
- Rate Code (Assigns Rate Structure to the Account' s Service Class) - (Please provide one line of data per rate code)
  - Water, Sewer, Irrigation
- County Code Indicator (Inside/Outside) -If this exists
- Service Classification (Water, Sewer, etc.)
- Meter Size (0.625, 0.5,0.75, 1,1.25,1.5,2, or 5/8,1/2,3/4,1,1 1/2, etc.)
- Meter Manufacturer (optional but highly recommended)
- Meter Serial Number ((for water meter and associated sewer account))
- Register ID #
- Radio ID # (ERT, SmartPoint, MIU, etc.)
- Install Date (preferred format mm/dd/yyyy)
- Meter Location Information (optional)
- Meter Read Date - (preferred format mm/dd/yyyy)
- Current Register reading (Need to know meter registration; gals, kgals, cu.ft., etc)
- Bill Units (gals, kgals, cu. ft., etc)
- Billed Consumption
- Multiplier (if used)
- Usage / Billed consumption (Need to know billed units; gals, kgals, cu.ft., etc)
- Bill Amount (For each rate code item - only include direct charges for amount consumed and do not include taxes, late charges, fees, etc.)
- Reading Type (estimated or actual, if available)
- Multi-Units -the number of units served by one meter on an individual account, if used to calculate either water or sewer billing revenue (if applicable). Ex: 150 units served by one 2" meter supplying a condominium complex.