CITY OF HART
407 S. STATE ST.
HART, MI 49420
REGULAR MEETING OF CITY COUNCIL - COUNCIL PROCEEDINGS
November 12th, 2024
MINUTES – Approved

PRESENT: Mayor Vicki Platt, Councilors Catalina Burillo, Jim Cunningham, Dean Hodges, and Amanda Klotz
ABSENT: Jim Evans and Kris Trygstad
OTHERS PRESENT: City Manager – Rob Splane City Clerk – Karla Swihart, BioPure Superintendent – Paul Cutter, Deputy Clerk – Laci McAuliffe, Energy Superintendent – Mike Schiller, Hart Police Chief – Juan Salazar, HEART – Nicole Kleiner, Marco Iafrate, Sharon Hallack, Greg & Vicki Tolan, Chris Klotz, Phil Thomson, and Dawn Mullen

Mayor Platt called the meeting to order; following the roll call, then led the Council in the pledge of allegiance.

MOTION TO ACCEPT RESIGNATIONS:

- A. Klotz motioned to accept the resignations of Council member J. Cunningham for his seat with a term expiring November 2026 and Council member A. Klotz for her term expiring November 2026, and to declare both Council member seats vacant and supported by J. Cunningham.
  - Ayes: 5 Nays: 0 Absent: 2

OATHS OF OFFICE:

- City Clerk – Karla Swihart swore in Mayor elect Amanda Klotz and an appreciation gift was presented to former Mayor Vicki Platt as a thank you for serving the City of Hart the last 4 years.
- City Clerk – Karla Swihart swore in Council Members – Elect Jim Cunningham, Dean Hodges, and Karen Thomson
- Consideration of Appointment to Vacant Council Seats.
  - J. Cunningham motioned to appoint write in candidates Andrew Mullen and Betty Root to fill vacant Council seats with term ending November 2026 and supported by C. Burillo
    - Ayes: 5 Nays: 0 Absent: 2
- City Clerk – Karla Swihart swore in Appointed Council Members Andrew Mullen and Betty Root

PRESENT: Mayor Amanda Klotz, Councilors Catalina Burillo, Jim Cunningham, Dean Hodges, Andrew Mullen, Betty Root and Karen Thomson

APPROVAL OF AGENDA:

- J. Cunningham motioned to approve Amended agenda and was supported by C. Burillo
  - Ayes: 7 Nays: 0 Absent: 0

PUBLIC COMMENTS:

- NONE

CORRESPONDENCE, EVENTS, PRESENTATIONS:

- NONE

CONSENT AGENDA:

- Approval of minutes from October 22nd, 2024
- Bills, Claims, Payroll
- Reports of Boards, Commissions, and Committees
- Department Reports – Police/BioPure/Public Works/Energy/C&E Dvlp
  - C. Burillo motioned to approve Consent Agenda and supported by Karen Thomson
    - Ayes: 7 Nays: 0 Absent: 0

ACTION ITEMS:

- Resolution 2024-32 Approve Metro Act Right-of-Way Application

WHEREAS, by Application dated September 10, 2024, filed with the City on ____, and administratively complete as of _____, KEPS Technologies Inc. d/b/a ACD.net ("KEPS Technologies") has applied for a permit to use the City right-of-way, as shown on the maps included with the application; and

WHEREAS, the City has reviewed the application, and in compliance with the terms of the Metro Act, being Act 48 of the Public Acts of 2002 (the "Metro Act"), desires to consider and act upon this application on a timely basis.

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

1. Application for Access, The application of KEPS Technologies for access to use the City's right-of-way, as shown on the maps included with the KEPS Technologies application, is hereby granted.
2. Permit, KEPS Technologies shall be given a unilateral permit, based on the Michigan Public Service Commission ("MPSC") approved form, as attached as Exhibit A, for a term of five (5) years. The City Manager is hereby authorized to sign the permit on behalf of the City.
3. Requirement for Bond and City Engineer Approval, Prior to commencement of construction, the applicant shall provide to the City a bond in an amount determined by the City Engineer. That bond (if any) shall be attached as Exhibit B to the Metro Act permit. Further, prior to the commencement of construction, the City Engineer shall review and approve the proposed construction plan for the facilities. Applicant shall make all reasonable revisions as may be required by the City Engineer.
4. Notifications and Mailings, The City Clerk and/or City Attorney is authorized to send a copy of the permit to the applicant, who shall be requested to acknowledge receipt of the permit in the space provided for acknowledgement. The City Clerk and/or City Attorney is also authorized and directed to mail a copy of this resolution to the MPSC and to the Metro Authority, in accordance with the terms of the Metro Act.
5. All resolutions or part of resolutions in conflict herewith shall be and the same are hereby rescinded.

YEAS: Members_____

NAYS: Members_____

ABSTAIN Members_____

RESOLUTION DECLARED ADOPTED.

_____

Karla Swihart, Clerk, City of Hart

STATE OF MICHIGAN)

) ss.

COUNTY OF OCEANA)

I, the undersigned, the duly qualified and acting Clerk of the City of Hart, Oceana County, Michigan (the "City") do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council at a regular meeting on the ___ day of ____2024 the original of which is on file in my office. Public notice of said meeting was given pursuant to and in compliance with Act No. 267, Public Acts of Michigan, 1976, as amended, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for the meeting.

IN WITNESS WHEREOF, I have hereto affixed my official signature on this ___ day of ___, 2024.

_____

Karla Swihart, Clerk, City of Hart

METRO Act

Unilateral Form

RIGHT-OF-WAY

TELECOMMUNICATIONS PERMIT

This permit issued this ___ day of ___, 2024, by the City of Hart, Oceana County, Michigan

1. Definitions

1.1 Date of Issuance Shall mean the date set forth above.
1.2 Manager shall mean Municipality's City Manager, or his or her designee
1.3 METRO ACT shall mean the Metropolitan Extension Telecommunications Right-of-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
1.4 Municipality shall mean the City of Hart, Michigan, a Home Rule City.
1.5 Permit shall mean this document
1.6 Permitee shall mean **KEPS Technologies Inc. d/b/a ACD.net organized under the laws of the State of Michigan whose address is 1800 N. Grand River Ave. Lansing Mi 48906**
1.7 Public Right-Of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public Right-of-Way does not include a federal, state, or private right-of-way.
1.8 Telecommunications Facilities of Facilities shall mean the Permittee's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communications device.
1.9 Term shall have the meaning set forth in Part 7.

2. GRANT
2.1 Municipality hereby issues a permit under the METRO Act to Permittee for access to and ongoing use of the Public Right-of-Way identified on Exhibit A to construct, install and maintain Telecommunication Facilities on the terms ser forth herein.
2.1.1 Exhibit A may be modified by Manager upon written request by Permittee
2.1.2 Any decision of Manager on a request by Permittee for a modification may be appealed by Permittee to Municipality's legislative body.
2.2 Overlashing. Permittee shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act MCL 484.2361.
2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3. Contacts, Maps and Plans
3.1 Permittee Contacts. The names addresses and the like for engineering and construction related information for Permittee and its Telecommunication Facilities are as follows:
3.1.1 The address, email address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality) is: **Kevin Schoen. 1800 N. Grand River Avenue, Lansing, Michigan 48906. Phone: (517) 999-3250 Fax: (517) 999-3993 Email: schoen.kevin@acd.net**
3.1.2 If Permittee's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title of department) for them is **Phil Brown. 1800 N. Grand River Avenue, Lansing Michigan 48906. Phone: (517) 999-3213 Fax: (517) 999-3993 Email: brown.phil@acd.net**

3.1.3 The name, title, address, email address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction for the Telecommunication Facilities is: **Steve Schoen, 1800 N. Grand River Avenue, Lansing Michigan 48906. Phone: (517) 449-2456 Fax: (517) 999-3993 Email: Schoen.steve@acd.net**

3.1.4 The address, phone number and contact person (title or department) at Permittee's home office/reginal office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is **Steve Schoen, 1800 N. Grand River Avenue, Lansing Mi 48906. Phone: (517) 449-2456 Fax: (517) 999-3993 Email: Schoen.steve@acd.net**

3.1.5 Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency. **Emergency Phone Number, (517) 999-9999 (option #1)**

3.1.6 The preceding information is accurate as of the Effective Date. Permittee shall immediately notify Municipality in writing as set forth in Part 12 of any inaccuracies or changes in the preceding information.

3.2 Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunications Facilities to both Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).

3.3 As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours' notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipalities, Permittee shall inform Municipality as soon as reasonably possible of any changes from Previously supplies maps, records, or plans and shall markup maps provided by Municipality so as to Show the location of the Telecommunication Facilities.

4. Use of Public Right-of-Way

4.1 No Burden of Public Right-of-Way. Permittee, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference due to changed circumstances, Permittee, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way be Permittee over any present or future permittees of parties having agreements with Municipality of franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivision in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.

4.3 Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a

reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractor or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair, and Permittee shall pay the costs Municipality incurred for such repair.

4.4 Marking. Permittee shall mark all Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Permittee's name and toll-free number indicating that there are buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.

4.5 Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent branches of such trees from coming into contact with the Telecommunication Facilities, to the extent otherwise permitted by law of agreement and consistent with the following standards adopted by the Municipality: Permittee shall minimize the tree work and limit tree trimming to only those trees that are essential to maintain the integrity of the Telecommunications Facilities to the minimum extent possible necessary. No tree trimming or tree work shall be done in the public Right-of-Way without previously informing the City Manager, the City Building Inspector and affected landowners in writing not less than twenty (20) days before the trimming work expect in an emergency, in which case notice shall be given as soon as possible. Municipality has the right to request that Permittee remove and replace with a comparable tree, at Permittee's sole expense, trees which were significantly damaged by necessary work or trimming or provide restitution if a comparable tree is not available. Permittee shall dispose of all trimmed materials.

4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Permittee shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for the Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense. Place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

4.7 Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

4.7.1 The goals of such coordination shall be to encourage Permittee to conduct all work in Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

4.8 Compliance with Laws. Permittee shall comply with all laws, statues, ordinances rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether

federal, state, or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (Latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality, applying reasonable engineering standards, shall specify.

4.10 Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary such alternate route as Municipality, applying reasonable engineering standards, shall specify. The work shall be completed within a reasonable time period.

4.11 Public Emergency. Municipality shall have the right to serve, disrupt, dig up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality will attempt to provide notice to Permittee. Public Emergency shall be an condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.

4.12 Miss Dig. If eligible to join, Permittee shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

4.13 Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy. Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.

4.14 Identification. All personnel of Permittee and its contractors or subcontractors who have as part of their normal duties with the general public shall wear on their clothing a clearly visible identification card bearing Permittee's name, their name and photograph. Permittee shall account for all identification cards at all times. Every service vehicle of Permittee and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Permittee's name and telephone number.

5. Indemnification

5.1 Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims. Losses, liabilities, causes of action, demands, judgements, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the

Permittee's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

5.2 Notice Cooperation. Municipality will notify Permittee promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality will cooperate with Permittee in every reasonable way to facilitate the defense of any such claim. Municipality will consult with Permittee respecting the defense and satisfaction of such claim, including the selectin and direction of legal counsel.

5.3 Settlement. Municipality will not settle any claim subject to indemnification under this Part 5 without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any claim against Municipality for which Permittee is responsible hereunder.

6 Insurance

6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars ($5,000,000).

6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars ($5000,000) and providing coverage for claims discovered within three (3) yeas after the term of policy.

6.1.3 Automobile liability insurance in an amount not less than One Million Dollars ($1,000,000).

6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.

6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more then one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.

6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claim made basis.

6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carries on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carries shall be rated A+ or better by A.M. Best Company.

6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of $50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.

6.5 Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).

6.6 Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

7.1.1 Five (5) years from the Date of Issuance; or

7.1.2 When the Telecommunication Facilities has not been used to provide telecommunication services for a period of one hundred and eighty (180) days by Permittee or a successor or an assignee of Permittee; or

7.1.3 When Permittee, at its election and with or without cause, delivers written notice of termination to Municipality at leave one-hundred and eighty (180) days prior to the date of such termination; or

7.1.4 Upon either Permittee or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days (or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or

7.1.5 Unless Manager grants a written extension, one year from the date of Issuance if prior thereto Permittee has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Date of Issuance if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

8.1 Municipal Requirements. Municipality may require Permittee to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL 484.3115(3)].

9 Fees

9.1 Establishment Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

10.1 Removal; Underground. As soon as practicable after the Term, Permittee or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment.

11.1 Assignment. Permittee may assign or transfer its rights under this Permit, or persons or entities controlling Permittee may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Permittee's business, or by other means, subject to the following.

11.2 No such transfer or assignment or change in the control of Permittee shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Date of Issuance until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.3 After the completion of such construction, Permittee must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Section 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Permittee's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Permittee shall comply with any updated insurance and performance bond requirements under Section 6 and 8 respectively, which Municipality reasonably deems necessary.

11.4 Permittee may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to City Manager, City of Hart, 407 S. State Street, Hart, Michigan, with a copy to Mark E. Nettleton, Mika Meyers PLC, 900 Monroe Ave., N.W. Grand Rapids, Michigan 49503-1423

12.1.2 If to Permittee, to Kevin Schoen. 1800 N. Grand River Avenue, Lansing, Michigan 48906. Phone (517)999-3250 Fax: (517)999-3993, Email: schoen.keving@acd.net.

12.2 Change of Address. Permittee and Municipality may change its address or personnel for the receipt of notice at any time by giving notice thereof to the other as set forth above.

13 Other Items.

13.1 No Cable; OVS. This Permit does not authorize Permittee to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are

defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C 522 (6), 573 and 47 CFR 76.1500).

13.2 Effectiveness. This Permit shall become effective when Permittee has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acknowledgment of receipt, below

13.3 Authority. This Permit satisfies the requirements for a permit under Section 5 of the METRO Act [MCL 484.3105].

13.4 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overboard or otherwise unenforceable, such determination/holding shall not be construed as effecting the validity any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overboard, unenforceable, or invalid, Permittee and Municipality may nevertheless enforce such provisions to the extent permitted under applicable law.

13.5 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

CITY OF HART

Attest:

By:_____ By:_____

Karla Swihart, Clerk Rob Splane, Manager

Date: _____,2024

Acknowledgement of Receipt: Permittee acknowledges receipt of this Permit granted by Municipality upon the terms and conditions contained therein.

KEPS Technologies Inc.,d/b/a ACD.net

By:_____

Its:

Date_____,2024

- A. Mullen motioned to approve Resolution 2024-32 and supported by Karen Thomson
  - Ayes: 7 Nays: 0 Absent: 0

- Resolution 2024-33 Accept quotes and award Fire Hydrant replacement work

WHEREAS, the City of Hart is responsible for the maintenance and repair of the City water system and public safety; and

WHEREAS, the City of Hart has identified a list of Fire Hydrants that require replacement; and

WHEREAS, the City has sought competitive quotes for qualified local contractors capable of the work; and

WHEREAS, in order to secure the benefits of efficient self-government and to promote and protect our common interests and welfare, the City Council hereby declares:

NOW THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL

Accepts two competitive quotes for the replacement of three hydrants identified as priority locations, that present a potential public safety gap along Polk Road.

Authorizes and awards the work to low-bidder Wadel Stabilization $34,300.

Directs the City Manager to sign all related documents on behalf of the City of Hart.

- A. Mullen motioned to approve Resolution 2024-33 and supported by D. Hodges
  - Ayes: 7 Nays: 0 Absent: 0

- Nominate and Vote to Elect Mayor Pro-Tem

Betty Root nominated Jim Cunningham for Mayor Pro-Tem and Jim excepted.

- K. Thomson motioned to accept J. Cunningham to Mayor Pro-Tem and supported by B. Root
  - Ayes: 7 Nays: 0 Absent: 0

DISCUSSION ITEMS:

- Special Events Permit – Lighted Holiday Parade
  - Ayes: 7 Nays: 0 Absent: 0
- Mid-Michigan Community Action Agency Weatherization Trailer
  Mid-Michigan Community has a 40ft trailer they would like to park in Hart for a week to lend support to residents on being a more energy efficient in their homes. Would like to setup in a parking lot where residents can come and visit the trailer and receive information.
  - Ayes: 7 Nays: 0 Absent: 0
- Appointment of City Officers,
  The appointive officers of the City shall be the City Manager, Clerk, Assessor, City Attorney, Treasurer, and Chief of Police, who shall be a member of the City Police Department. The Council may, by ordinance, create such department heads as it may deem necessary for the operation of the City government, or may combine any such appointive offices in one of more persons in any manner not inconsistent with the provisions of the general laws of the State.
  The Council shall within thirty (30) days following the annual City elections, appoint the appointive officers provided in this Charter, each of whom shall hold office until his successor is appointed. Appointees shall be selected with reference only to their qualifications and fitness and for good of the public service. Residence requirements of the appointive offices shall be at the discretion of the Council except as hereinafter set forth.
- Appointment of Council Members to Boards and Commissions.
  Will have a list of all boards and commissions for Council members to review and see what ones they are able to sit in on at the next meeting.

CITY MANAGER'S REPORT:

Updates:

- A new issue was found at Hart BioPure as air leaking from the aeration header through corroded iron piles. Work is being done to identify options and the best course of action.
- DPW department has needed a new dump truck for several years. As each budget is set, funding has not allowed for this capital purchase. Recently maintenance costs of the truck in the poorest condition have been significant. A decision will have to be made soon on how best to proceed to protect out ability to remove snow efficiently.
  A. Lease options are being sought out to allow the purchase of a new truck, but even if we order now, lead times are 16 months +
  B. Would council allow for an "up to" amount to purchase a used dump truck for use in the interim?
- The inaugural Oceana County Veteran's Day Parade was held in Hart on November 9th with decent attendance at this first-time effort here.

Legacy Topics:

- Safe Routes to School trail project

Upcoming Topics:

- Redevelopment Ready Community re-certification in 2025
  Adoption of 5-year Park and Rec Master Plan
  Reaffirmation of the City Master plan
  TIFA By-Laws
  Zoning Drawings – add to ordinances
  Adopt Zoning Board of Appeals By-Laws
  Review proposal to have council members serve as ZBA
- Council review of rental inspection policies, procedures, and implementation.

COMMUNICATIONS FROM THE MAYOR AND COUNCIL:

- Mayor Klotz – Thank you to the City of Hart for trusting me to serve as your Mayor and electing me into office.
- J. Cunningham what a wonderful turn out at Vets Park for Veterans Day.
- C. Burillo Please join us November 22nd for downtown holiday decorating please meet at the fairgrounds 2pm
  Also for the next council meeting discuss for 2025 establish times for City Council Meeting.

ADJOURN:

- There being no further business to come before the Council, Mayor Klotz adjourned the meeting at 8:31pm. The next regularly scheduled meeting will be on November 26th, 2024, at 7:30 pm.

Respectfully Submitted

Karla Swihart

Karla Swihart, City Clerk