



CITY OF ALLEGAN  
CITY COUNCIL MEETING  
Monday, August 28, 2023 – 7:00PM  
City Hall – 231 Trowbridge Street Allegan, MI 49010

---

7:00 PM Council Meeting (Action to be taken by Council on the following agenda items)

**Note: Please be courteous and turn cell phones off during the meeting.**

**1. CALL TO ORDER**

**2. ROLL CALL (Excused Absences if Any)**

**3. PLEDGE OF ALLEGIANCE**

**4. APPROVAL OF AGENDA**

4A – Approval of the Regular Council Meeting Agenda for August 28, 2023.

**5. APPROVAL OF MINUTES**

5A – Approval of the Study Session Minutes from August 14, 2023, Council Meeting.

5B – Approval of the Regular Meeting Minutes from August 14, 2023, Council Meeting.

**6. SPECIAL PRESENTATIONS & RECOGNITIONS BY MAYOR OR COUNCIL**

**7. FIRST READING OF ORDINANCES and SCHEDULING OF PUBLIC HEARINGS**

**8. PUBLIC HEARINGS AND ADOPTION OF ORDINANCE**

**9. PUBLIC COMMENT**

**10. WRITTEN PETITIONS & REPORTS FROM SPECIAL COMMITTEES**

10A – Request from Wings of Hope.

10B – Request from Allegan Heroes.

10C - Request from Allegan Speak Up.

**11. REPORTS FROM BOARDS, COMMISSIONS & CITY OFFICES**

11A. City Boards, Commissions and Area Agencies

11B. Finance Department

11B.1 – Request to approve Accounts Payable and Payroll.

11B.2 – Request to adopt Resolution 23.26 to approve an agreement package for the City of Allegan Retirement Plan Services and transferring the city’s recordkeeping from John Hancock to Empower.

11C. Public Safety

11D. Water Utilities

11E. Public Works

11F. City Manager & City Clerk

11F.1 – Request to approve the cancellation of the September 11, 2023, Council meetings to participate in the annual Allegan County Fair Parade.

11F.2 – Request to accept for your information proposed changes to Chapters 1-5, 7-8, 10-12, 14, 15, 18, and 21 of the City of Allegan Code of Ordinances.

11F.3 – Request to approve a minor plat amendment to combine parcels 51-300-043-01 (527 Maple St) and 51-300-045-00 (531 Maple St).

11F.4 – Acceptance of the July 2023 Downtown Infrastructure and Streetscape Project Progress report.

## **12. BOARD APPOINTMENTS**

## **13. COMMUNICATIONS FROM CITY MANAGER, COUNCIL & MAYOR**

## **14. CLOSED SESSION**

## **15. ADJOURNMENT**

### **PLEASE NOTE**

#### **AUDIENCE PARTICIPATION:**

In addition to addressing the Council during public hearings and under “Public Comment,” members of the audience may address the Council, on items listed under agenda numbers 11B-11F; please limit your comments to three minutes or less per item. Please step up to the Podium and state your name and address.

The proposed process for items listed under agenda numbers 11B-11F above shall be as follows:

1. Announcement of the agenda item by the Mayor.
  2. Verbal report provided by staff.
  3. Mayor asks councilmembers if they have any questions for staff to clarify the staff report.
  4. Mayor opens/closes the floor to receive public comment (if a public hearing is required or if the mayor determines public comments is warranted).
  5. Motion is made by a council member and seconded by another council member.
  6. Mayor then calls on councilmembers to discuss the motion if councilmembers wish to discuss.
  7. Mayor calls for a vote on the item after discussion has occurred.
-



**CITY OF ALLEGAN  
CITY COUNCIL STUDY SESSION MINUTES  
Monday August 14, 2023, at 5:30 PM  
City Council Chamber – 231 Trowbridge Street  
Allegan, Michigan**

**1. Call to Order**

Mayor Galloway called the meeting to order at 5:30 PM.

**2. Public Comment**

No comment given.

**3. Round Table Discussion amongst Council Members**

Mayor Pro-Tem Bird inquired whether Brady Street and Hubbard Street will be open for vehicular traffic after the base layer of asphalt has been laid.

Councilmember Andrus informed the rest of Council that the Historic District Commission does not currently have plans to discuss the committee's future with City Council. Andrus also discussed the wayfinding meetings that occurred a couple weeks ago and her meeting with concerned residents interested in a recycling program coming to the city.

Mayor Galloway asked about the opening of City Hall restrooms for shoppers after hours and on weekends as well as cancelling the September 11<sup>th</sup> City Council meeting because of the Allegan County Fair parade.

**4. Review of Economic Development Report from Michael Kiella and Dave Redding**

Michael Kiella and Councilmember Redding reviewed the framework of the Economic Development Corporation study group and their findings. Kiella also submitted his formal resignation from the Allegan Economic Development Corporation.

**5. Discussion regarding a Proposed Development for Pingree Park (Joe & Deb Leverence)**

Joe Leverence presented his proposal for developing the land formerly known as Pingree Park.

**6. Discussion regarding a Rental Inspection Program**

Council is largely pleased with PCI's proposal and is eager for the rental inspection program to begin.

**7. Discussion regarding Installation of EV Charging Stations**

Council is supportive of EV chargers being installed in Downtown Allegan, primarily in the Cutler Street parking lot and potentially in other lots in the future.

**8. Review of Council Agenda**

**9. Adjournment**

Mayor Galloway adjourned the meeting at 6:58 PM.

**Respectfully submitted,**

**Michaela Kleehammer, City Clerk**





**CITY OF ALLEGAN  
CITY COUNCIL REGULAR MEETING MINUTES  
Monday August 14, 2023, at 7:00 PM  
City Council Chamber – 231 Trowbridge Street  
Allegan, Michigan**

**1. Call to Order**

Mayor Galloway called the meeting to order at 7:06 PM.

**2. Roll Call**

Present: Andrus, Bird, Galloway, Hanse, Morgan, Redding, Zeter

Absent: None.

Also Present: City Manager Joel Dye, Downtown Manager Parker Johnson, City Clerk Michaela Kleehammer, and Water Utilities Director Doug Sweeris.

**3. Pledge of Allegiance**

**4. Approval of Agenda**

4A – Approval of the Regular Council Meeting Agenda for August 14, 2023.

Motion by Zeter with support from Hanse to approve the Regular Council Meeting Agenda for August 14, 2023, as amended. **Motion passed 7-0.**

**5. Approval of Minutes**

5A – Approval of the Study Session Minutes from July 24, 2023, Council Meeting.

Motion by Andrus with support from Morgan to approve the study session minutes from July 24, 2023. **Motion passed 7-0.**

**6. Special Presentations & Recognition by Mayor or Council**

**7. First Reading of Ordinances and Scheduling of Public Hearings**

**8. Public Hearings and Adoption of Ordinance**

8A – Public hearing for the OPRA application for 128 Locust Street and adoption of

The minutes of this meeting will be available at City Hall, 231 Trowbridge Street Allegan, MI 49010 269.673.5511  
The City of Allegan is an equal opportunity provider and employer.

Resolution 23.25.

Public hearing (7:15 – 7:15) – No comment was given.

Motion by Bird with support from Morgan to adopt Resolution 23.25 for a 9-year OPRA certificate instead of eight years. **Motion passed 7-0.**

## 9. Public Comment (7:16 – 7:22)

- Ron Jones (217 Lincoln)

## 10. Written Petitions & Reports from Special Committees

## 11. Reports from Boards, Commissions & City Offices

### 11A. City Boards, Commissions, and Area Agencies

11A.1 – Airport Advisory Board August Meeting – Peter Hanse

11A.2 – Historic District Commission August Meeting – Mike Zeter

11A.3 – Downtown Development Authority August Meeting – Teresa Galloway

### 11B. Finance Department

11B.1 – Request to approve Accounts Payable and Payroll.

Motion by Bird with support from Andrus to approve accounts payable and payroll.  
**Motion passed 7-0.**

### 11C. Public Safety

### 11D. Water Utilities

11D.1 – Request to approve a purchase order for Systems Specialties to provide three diverting and isolation valves for the Water Resource Recovery Facility in the amount of \$12,566.

Motion by Zeter with support from Bird to approve the purchase order for Systems Specialties. **Motion passed 7-0.**

11D.2 – Request to approve a purchase order for Kennedy Industries to provide replacement parts for the JWC Septage Honey Monster in the amount of \$14,200.

Motion by Morgan with support from Andrus to approve the purchase order for Kennedy Industries. **Motion passed 7-0.**

11D.3 – Acceptance of a report regarding payment for emergency work performed by

Waste Recovery Systems on the Eastern Avenue lift station force main.

Motion by Andrus with support from Bird to accept the report regarding payment for emergency work performed by Waste Recovery Systems on the Eastern Avenue lift station force main. **Motion passed 7-0.**

#### 11E. Public Works

#### 11F. City Manager & City Clerk

11F.1 – Request to approve updated AT&T cellular lease agreement terms.

Motion by Morgan with support from Bird to approve staff's recommendation as written. **Motion passed 7-0.**

11F.2 – Request to approve the construction of six dumpster enclosures in Downtown Allegan.

Motion by Andrus with support from Morgan to approve the construction of six dumpster enclosures in Downtown Allegan. **Motion passed 5-1-1. Yea: Andrus, Bird, Hanse, Morgan, Redding. Nay: Zeter. Abstain: Galloway.**

### 12. Board Appointments

### 13. Communications from City Manager, Council & Mayor

Water Utilities Director Sweeris spoke about water loss.

Downtown Manager Johnson mentioned that there are two more Fork in the Road food truck rallies and two more Rollin' on the River concerts this year. Johnson also noted that the Griswold Auditorium is hosting several back-to-back events in the next two weeks.

Councilmember Redding inquired about an update on the Allegan City Dam's powerhouse.

Councilmember Andrus noted that the Water Utilities Department is holding a coloring contest.

Mayor Pro-Tem Bird remarked about the tour of the 100 Leafs marijuana grow facility that he and several others attended last week.

Mayor Galloway reminded Council that the city manager's review is scheduled for August 30<sup>th</sup> at 5:30 PM and that Clerk Kleehammer will forward the results of the 360° evaluation to Council when the completion deadline has passed.

### 14. Closed Session

### 15. Adjournment

The minutes of this meeting will be available at City Hall, 231 Trowbridge Street Allegan, MI 49010 269.673.5511  
The City of Allegan is an equal opportunity provider and employer.

Mayor Galloway adjourned the meeting at 8:02 PM.

**Respectfully submitted,**

**Michaela Kleehammer, City Clerk**



August 8, 2023

City of Allegan  
Joel Dye  
231 Trowbridge  
Allegan, MI 49010

Dear Joel,

Local community members would like to hold a holiday fundraiser for the Wings Home at the Griswold Auditorium on December 2, 2023. The proposed event is to include a showing of a holiday movie, entertainment, crowd interactions, beverages (including alcoholic possibly) and a large number of people from our community. Please find the attached rental form with additional details.

Wings Home is a 4-bedroom home in the city of Allegan. It provides a home-like atmosphere to Wings of Hope patients during the last days of their lives. There is no cost to live at Wings Home. Volunteers and staff provide 24-hour care. Fundraisers done by our incredible community make this possible. The Wings Home operates solely on community support and does not receive government or insurance dollars.

Can the city of Allegan donate the rental of the Griswold for this fundraising event? Please let me know if you have any additional questions. We'd love your help.

In gratitude,

Theresa Lynn, PhD, RN, LMSW  
Director

Wings Home is a 501(c)(3) tax-exempt organization and contributions are tax-deductible as allowable by law.

# THE GRISWOLD AUDITORIUM RENTAL FORM

REQUESTS MUST BE SUBMITTED AT LEAST 30 DAYS BEFORE EVENT



DEPOSIT



REMAINDER

Name: Wings Home

Address: 330 Linn St

City: Allegan State: MI Zip: 49010

Phone: 269-686-8659 Email Address: achestnut@wingsofhopehospice.com  
tlynn@wingsofhopehospice.com

Contact Information of Person in Charge of the Event (Point of Contact)

Name: Mark Heather

Cell Phone: 616-901-8963

Type of Event: fundraiser for wings home

Ticketed Event? ☒ Yes ☐ No

Room(s) Requested (see following pages for additional details)

☒ Auditorium ☐ Banquet Room ☒ Marilla Lounge ☐ Club Room ☐ Whole Building

Sound and Light Operator for Auditorium? ☒ Yes ☐ No

Day Of (include set up & tear down times as well as times for multiple rooms)

Date: 12-2-2023 Start Time: 4:00 pm End Time: 10:30 pm  
(approx.)

Equipment Requested

☐ Tables & Chairs (Quantity Requested: \_\_\_\_\_) ☐ Podium ☒ Microphone

Approximately How Many People Are Expected at the Event?

fill the auditorium seats

Approval (required signatures from one or both representatives)

\_\_\_\_\_  
Griswold Facility Manager

\_\_\_\_\_  
City Manager

BY SUBMITTING THIS CONTRACT, THE INDIVIDUAL/ORGANIZATION has full responsibility for the care of the area being used and will leave the facility in clean condition with equipment in place. It is further understood that the individual/organization assumes responsibility for the actions and damages of the individual/organization and/or its guests and that the City of Allegan is held harmless in any liability involving the above rental usage. The individual/organization is fully responsible to comply with the Allegan County Health Department regulations. If alcohol is being served, an alcohol agreement must be completed and proof of \$1,000,000.00 liability naming the City of Allegan as additional insured must be presented prior to the event.

[Signature]  
Signature

8/10/23  
Date

Allegan Heroes is a charitable organization raising money benefitting local service men and women who are currently serving around the world, as well as Veterans residing in local nursing homes. The organization was started in the early 2000's by Rick and Ruth Smith, as a way to provide extra support for our local military members.

The organization and the services provided are entirely donation driven. A full day of activities is planned for November 4th, 2023, including a Vendor Show during the morning and early afternoon, offering local small businesses a chance to sell and advertise their products, a Variety Show, showcasing local talent, and a silent auction with donations from local businesses. We also have a goal to add a pinning ceremony for local veterans during this year's event.

We are asking for a discounted rate for the use of Griswold Auditorium in order to further the distance the funds raised can go for our cause. The use of the Griswold is the largest expense for our organization, as many resources are provided by local businesses and volunteers. The cost of assembling care packages can easily reach \$100 per box, not including the cost of shipping.

All proceeds go to benefit those from our local community, continuing to show our local military members, current and past, that their community still supports them.

Thank you for your time,  
Kimberly Pullen  
Allegan Heroes



February 23, 2023

Allegan City Council  
Attention: Joel Dye, City Manager  
231 Trowbridge Street  
Allegan, MI 49010

Mr. Dye,

Allegan, Speak Up is planning an event focused on women's rights on Saturday, Oct. 14, 2023. We would like to hold the event at the Griswold Auditorium and utilize the auditorium, Marilla Lounge, and basement areas of the building. We are asking for the fees for using this space be waived, due to Allegan, Speak Up being a non-profit organization.

Our grassroots organization was founded by a group of Allegan residents in 2019 with the goal of countering inequalities and creating a more informed and inclusive community. Since we rely solely on donations and volunteered time from our members, we respectfully request that the Allegan City Council consider allowing our group to rent the Griswold facility at a reduced rate.

Our goal is to feature speakers related to women's rights and issues in the auditorium while hosting a women-owned business fair in the basement and inviting organizations providing services to women in the Marilla Lounge. The intent of our event as a whole will be to advocate for women, provide resources and education on a number of issues, and promote area women-owned retailers and services.

The event itself will take place from 10 a.m. to 6 p.m. To accommodate set up and clean up, we would utilize the Griswold from 8 a.m. to 8 p.m.

Our organization hosted a similar event at the Griswold on Oct. 15, 2022. That event was attended by approximately 50 people. In this second iteration, we hope to attract 150-300 attendees to the event and, in the process, our charming city.

Thank you for your time and consideration of our request. Please reach out to me with any questions or concerns.

Alivia Spicer  
Allegan, Speak Up  
alivia@thesassyolive.online  
616.337.7510





City of Allegan  
Finance Department  
269.673.5511  
231 Trowbridge Street  
Allegan, MI 49010

## MEMORANDUM

TO: Allegan City Council  
FROM: Carol Canales, Finance Clerk  
REVIEWED BY: Joel Dye, City Manager  
DATE: August 28<sup>th</sup>, 2023  
  
SUBJECT: Approval of Accounts Payable and Payroll

### Action Requested:

It is requested that City Council approve accounts payable in the amount of \$307,864.92 and payroll in the amount of \$134,014.22 for a total disbursement of \$441,879.14.

### Background:

Attached is the Disbursement Report highlighting the accounts payable by fund as well as listing the individual payments to the vendors paid through August 28<sup>th</sup>, 2023.

### Attachment(s):

Disbursement Report

# Disbursement Report

## August 28, 2023

### Accounts Payable by Fund August 15th through August 28th, 2023

General Fund	\$	147,143.00
Major Streets	\$	2,361.06
Local Streets	\$	3,765.84
Grants	\$	24,684.17
DDA	\$	15,000.00
PA	\$	4,649.95
Sewer	\$	24,701.52
Water	\$	64,933.04
Motor Vehicle Pool	\$	20,626.34
Trust & Agency	\$	-
<b>Total A/P by Fund</b>	<b>\$</b>	<b>307,864.92</b>
Regular Check Run	\$	211,868.44
ACH/EFT/Wires	\$	92,901.48
Off-Cycle Check Runs	\$	3,095.00
<b>Total Checks</b>	<b>\$</b>	<b>307,864.92</b>
Payroll Check Remittances	\$	1,436.39
Payroll EFT Remittances	\$	55,361.20
<b>Total Remittances</b>	<b>\$</b>	<b>56,797.59</b>
Payroll - August 14th (for WE 08/13/2023)	\$	77,216.63
<b>Total Payroll</b>	<b>\$</b>	<b>134,014.22</b>
<b>Total Disbursements</b>	<b>\$</b>	<b>441,879.14</b>

**8/28/2023**

**Off Cycle Check Runs**

<b>Check #</b>	<b>Vendor Name</b>	<b>Description</b>	<b>Amount</b>	<b>Date</b>
6458	ALLIANCE BEVERAGE DISTRIBUTION	Beverages - Griswold Event	\$ 2,095.00	08/15/23
6459	HUNTINGTON BANK	Annual Admin Fee	\$ 500.00	08/15/23
6460	US BANK NATIONAL ASSOCIATION	Bond Payment	\$ 500.00	08/15/23
<b>Total Manual Checks</b>			<b>\$ 3,095.00</b>	

**Payroll Remittance Checks Report**

<b>Check #</b>	<b>Vendor</b>	<b>Description</b>	<b>Amount</b>	<b>Date</b>
6461	MISDU	Child Support	\$ 860.96	08/16/23
6462	HOLLAND COMMUNITY HOSPITAL	Wage Garnishments	\$ 133.31	08/16/23
6463	COAM	Union Dues	\$ 126.32	08/17/23
6464	POAM	Union Dues	\$ 315.80	08/17/23
<b>Total Payroll Checks</b>			<b>\$ 1,436.39</b>	
			<b>**Included in Payroll Total</b>	

**EFT Payroll Payment Report**

<b>EFT #</b>	<b>Vendor</b>	<b>Description</b>	<b>Amount</b>	<b>Date</b>
EFT 1054	MI DEPT OF TREASURY	SITW	\$ 14,587.55	08/14/23
EFT 1055	JOHN HANCOCK	Retirement - 457/Loan	\$ 3,316.88	08/16/23
EFT 1056	FEDERAL TAX DEPOSIT	Federal Taxes	\$ 26,317.39	08/16/23
EFT 1057	MERS DC	Retirement - PD	\$ 367.24	08/16/23
EFT 1058	JOHN HANCOCK	Retirement - MPP	\$ 8,257.76	08/16/23
EFT 1059	MERS	Retirement - PD	\$ 2,514.38	08/22/23
<b>Total Payroll EFT Payments</b>			<b>\$ 55,361.20</b>	
<b>Total Manual Checks</b>			<b>\$ 59,892.59</b>	

## Check Register - EFT

8/28/2023

Check Date	Check #	Vendor Name	Description	Total Amount
8/14/2023	3408	STATE OF MICHIGAN	Sales Tax - July 2023	\$ 1,228.56
8/14/2023	3409	CONSUMERS ENERGY	AUGUST 2023 - 5747 - 100 PARK AVE #C	\$ 18,241.83
8/14/2023	3410	DELTA DENTAL	Premiums	\$ 3,545.44
8/14/2023	3411	OPTUM BANK	Monthly Maintenance Fees - June 2023	\$ 55.00
8/14/2023	3412	PITNEY BOWES INC	Postage	\$ 200.97
8/15/2023	3413	CITY OF ALLEGAN	06/01 - 07/01/2023 USAGE	\$ 21,628.48
8/15/2023	3414	CONSUMERS ENERGY	AUGUST 2023 - 5511 - 1451 29TH ST	\$ 445.74
8/15/2023	3415	CONSUMERS ENERGY	AUGUST 2023 - 3674 - 1451 29TH ST	\$ 74.68
8/15/2023	3416	HUNTINGTON BANK	Account Analysis Fee - July 2023	\$ 484.55
8/16/2023	3417	CONSUMERS ENERGY	AUGUST 2023 - 2350 - 231 TROWBRIDGE ST	\$ 1,119.55
8/16/2023	3418	CONSUMERS ENERGY	AUGUST 2023 - 1078 - 261 HUBBARD ST	\$ 779.13
8/21/2023	3419	ENTERPRISE FLEET MANAGEMENT	Maintenace Management	\$ 16,594.76
8/22/2023	3420	MERS OF MICHIGAN	Retirement - PD	\$ 21,921.61
8/22/2023	3421	REPUBLIC SERVICES INC	July 2023 Services	\$ 6,581.18
Total EFT Payments: 14				\$ 92,901.48

**Check Register**  
**8/28/2023**

Check Date	Check #	Vendor Name	Description	Total Amount	# Invoices
8/11/2023	6439	ALLEGAN CO SHERIFFS OFFICE	Reserve Deputies - July 3 Jubilee	\$ 592.00	1
8/11/2023	6440	ALLEGAN COUNTY TREASURER	Property Tax Adjustment	\$ 6.42	1
8/11/2023	6441	ALLEGAN FIRE DISTRICT	Third Quarter Payment	\$ 57,820.00	1
8/11/2023	6442	ALLEGAN TRUE VALUE HARDWARE	July Statement	\$ 1,223.47	1
8/11/2023	6443	BLACK GOLD HOLDINGS	Asphalt	\$ 286.09	2
8/11/2023	6444	BS&A SOFTWARE INC	Annual Service & Support	\$ 4,805.00	1
8/11/2023	6445	C-COMM INC.	Single Torpedoes	\$ 26.97	1
8/11/2023	6446	CARLETON EQUIPMENT CO.	Solenoid Shutoff Fuel	\$ 261.57	1
8/11/2023	6447	FRONTIER COMMUNICATIONS OF MICHIGAN	Phones	\$ 96.49	1
8/11/2023	6448	GALLS, LLC	Streetguard Glove	\$ 52.77	1
8/11/2023	6449	GRAINGER	Parts/Supplies	\$ 117.49	1
8/11/2023	6450	LEGG LUMBER - ALLEGAN	Lumber/Greencoat	\$ 198.76	3
8/11/2023	6451	LOCK MASTER SECURITY LLC	Cloud Access Control Service - WTP	\$ 150.00	1
8/11/2023	6452	MELANIE DUNBAR	Gardening - Griswold	\$ 195.50	1
8/11/2023	6453	NORTH CENTRAL LABS	Lab Supplies	\$ 1,176.56	1
8/11/2023	6454	PJ PRINTING LLC	Printing Services	\$ 169.00	2
8/11/2023	6455	STATE INDUSTRIAL PRODUCTS CORP	Morning Fresh - WTP	\$ 321.68	1
8/11/2023	6456	STATE OF MICHIGAN	Boiler Inspection	\$ 160.00	1
8/11/2023	6457	WRAY'S SEPTIC TANK & DEV CO.	Septic Tank Cleaning	\$ 542.45	1
8/18/2023	6465	ALL-PHASE ELECTRIC SUPPLY CO	LED Lamp	\$ 480.00	1
8/18/2023	6466	ALLEGAN CO INFORMATION	Annual Maintenance	\$ 495.00	1
8/18/2023	6467	ALLEGAN RENTALS INC	Echo Parts/Feed Head/Oil	\$ 109.81	1
8/18/2023	6468	ALLEGAN U-STOR II	Shipping	\$ 11.09	1
8/18/2023	6469	AMAZON CAPITAL SERVICES	Supplies	\$ 1,228.62	7
8/18/2023	6470	APEX SOFTWARE	Sketching Software	\$ 780.00	1
8/18/2023	6471	B & B W/W CONSULTANTS, INC.	Testing	\$ 45.00	1
8/18/2023	6472	BIOTECH AGRONOMICS INC	Testing	\$ 449.00	1
8/18/2023	6473	BROKEN ARROW RECYCLING LLC	Downtown Dumpster - July	\$ 1,600.00	1
8/18/2023	6474	CAPITAL ONE PUBLIC FUNDING LLC	Loan Payment	\$ 26,716.25	1
8/18/2023	6475	CRONK SERVICES, LLC	Cemetery Mowing	\$ 4,800.00	1
8/18/2023	6476	CRYSTAL FLASH	Fuel	\$ 1,040.69	1
8/18/2023	6477	DELUXE ECHOSTAR LLC	Film	\$ 40.00	1
8/18/2023	6478	EJ USA, INC./EAST JORDAN IRON WORKS	Parts/Supplies	\$ 1,487.34	1
8/18/2023	6479	ETNA SUPPLY COMPANY	Parts/Supplies	\$ 183.98	2
8/18/2023	6480	FAMILY FARM AND HOME	Parts/Supplies	\$ 12.99	1
8/18/2023	6481	FRONTIER COMMUNICATIONS OF MICHIGAN	Phones	\$ 51.11	1
8/18/2023	6482	GALLAGHER INDUSTRIAL LAUNDRY INC	Uniforms	\$ 281.05	1
8/18/2023	6483	HOME DEPOT	Parts/Supplies	\$ 804.24	1
8/18/2023	6484	JOHNSON CONTROLS, INC.	Service - Griswold Air Handling Unit Supply Fan	\$ 4,051.00	1
8/18/2023	6485	KAECHELE PUBLICATIONS, INC	Publishing	\$ 1,289.00	2
8/18/2023	6486	KENNEDY INDUSTRIES, INC.	Annual Fee - Scada Monitoring System	\$ 6,800.00	1
8/18/2023	6487	KURITA AMERICA INC	Iron Filter Refurbish	\$ 18,640.00	1
8/18/2023	6488	NALCO WATER PRETREATMENT SOLUTIONS	Deionizer System Rental	\$ 136.80	2
8/18/2023	6489	NYE UNIFORM COMPANY	Police Emblems	\$ 276.34	1
8/18/2023	6490	ODP BUSINESS SOLUTIONS LLC	Office Supplies	\$ 283.64	1
8/18/2023	6491	PARAMOUNT	Film	\$ 465.20	1
8/18/2023	6492	PLUMBER'S PORTABLE TOILETS	Portable Toilet Rental	\$ 125.00	1
8/18/2023	6493	PREIN & NEWHOF, INC.	Engineering - Runway & Obstruction Clearing	\$ 4,886.60	2
8/18/2023	6494	PREMIER AERIAL & FLEET INSPECTIONS	Service Call	\$ 864.55	1
8/18/2023	6495	PURITY CYLINDER GASES, INC.	Carbon Dioxide Dip Tube	\$ 70.48	1
8/18/2023	6496	ROBERT L GALLOWAY	Down Payment - Dumpster Enclosures	\$ 15,000.00	1
8/18/2023	6497	SME-SOIL & MATERIALS ENGINEERS INC	Leaking Underground Storage Tank	\$ 2,585.50	1
8/18/2023	6498	STATE INDUSTRIAL PRODUCTS CORP	Probiotic Floor Cleaner	\$ 245.63	1
8/18/2023	6499	STATE OF MICHIGAN	Conference	\$ 585.00	1
8/18/2023	6500	STATE OF MICHIGAN	Conference	\$ 195.00	1
8/18/2023	6501	STEENSMA LAWN & POWER EQUIP	Oil Filter	\$ 33.02	1
8/18/2023	6502	TELE-RAD INC	Radio Service	\$ 180.00	2
8/18/2023	6503	TRACE ANALYTICAL LABORATORIES INC	Testing	\$ 922.00	2
8/18/2023	6504	USABUEBOOK	Parts/Supplies	\$ 332.70	2

**Check Register**  
**8/28/2023**

Check Date	Check #	Vendor Name	Description	Total Amount	# Invoices
8/18/2023	6505	VERIZON WIRELESS SERVICES LLC	Cell Phone Statement - July 2023	\$ 2,015.28	1
8/18/2023	6506	VISTAR	Regent Concessions	\$ 1,121.51	1
8/18/2023	6507	WAANDERS CONCRETE CO.	Limestone	\$ 808.00	3
8/18/2023	6508	WALT DISNEY STUDIOS	Film	\$ 6.74	1
8/18/2023	6509	WARNER BROTHERS	Film	\$ 250.00	1
8/18/2023	6510	WESTENBROEK OUTDOOR POWER	Oil & Filters	\$ 411.79	1
8/24/2023	6511	AMAZON CAPITAL SERVICES	Supplies	\$ 1,019.68	5
8/24/2023	6512	ATECH COMPLETE COMPUTER SOLUTIONS	HDMI Cable	\$ 7.99	1
8/24/2023	6513	BERENDS HENDRICKS STUIT INSURANCE	Liquor Liability - Griswold Event	\$ 354.00	1
8/24/2023	6514	BOYCE, DAVID D.	UB Refund	\$ 30.84	1
8/24/2023	6515	CARLSON, AMELIA	UB Refund	\$ 168.33	1
8/24/2023	6516	CFP HOLDING COMPANY LLC	Monthly Inspections	\$ 125.89	1
8/24/2023	6517	CRYSTAL FLASH	Fuel	\$ 896.47	1
8/24/2023	6518	DELUXE ECHOSTAR LLC	Film	\$ 80.00	2
8/24/2023	6519	ELIJAH RUSS	Rollin on the River	\$ 1,500.00	1
8/24/2023	6520	ETNA SUPPLY COMPANY	Parts/Supplies	\$ 1,024.00	1
8/24/2023	6521	FORBES, BECKY	UB Refund	\$ 37.72	1
8/24/2023	6522	GALLAGHER INDUSTRIAL LAUNDRY INC	Uniforms	\$ 276.30	1
8/24/2023	6523	HORNSTRA, TIMOTHY	UB Refund	\$ 108.48	1
8/24/2023	6524	HOWELL, FAITH	UB Refund	\$ 35.60	1
8/24/2023	6525	JAMIE VAN SLYKE	Cleaning Services	\$ 330.00	1
8/24/2023	6526	KUGELARD PROPERTY SERVICES LLC	109 Locust Rehab	\$ 24,684.17	1
8/24/2023	6527	LAFOUNTAIN, SIERRA	UB Refund	\$ 11.13	1
8/24/2023	6528	LUBINSKI, DUSTIN	UB Refund	\$ 45.63	1
8/24/2023	6529	MITEL	Phones	\$ 1,659.90	1
8/24/2023	6530	PENNYMAC	Tax Refund	\$ 943.59	1
8/24/2023	6531	PLANET HOME LENDING	Tax Refund	\$ 2,519.31	1
8/24/2023	6532	REDDER, MARIA	UB Refund	\$ 146.81	1
8/24/2023	6533	RICOH USA, INC.	Printing	\$ 312.96	1
8/24/2023	6534	RIVERA, JOHN	UB Refund	\$ 40.60	1
8/24/2023	6535	SAYLOR, TRACY	UB Refund	\$ 37.29	1
8/24/2023	6536	SCOTT'S LANDSCAPE MANAGEMENT INC	Topsoil	\$ 1,100.00	1
8/24/2023	6537	SHEA, JUSTYNN	UB Refund	\$ 17.76	1
8/24/2023	6538	SONY	Film	\$ 150.00	1
8/24/2023	6539	STATE INDUSTRIAL PRODUCTS CORP	Film	\$ 586.87	3
8/24/2023	6540	STATE OF MICHIGAN	Token Fee	\$ 132.00	1
8/24/2023	6541	TOKIO MARINE HCC-PUBLIC RISK GROUP	Claim	\$ 1,050.00	1
8/24/2023	6542	TRACE ANALYTICAL LABORATORIES INC	Testing	\$ 355.00	2
8/24/2023	6543	UNIVERSAL FILM EXCHANGES LLC	Fim	\$ 646.50	1
8/24/2023	6544	VANHORN PROPERTIES	UB Refund	\$ 34.45	1
<b>Total Checks: 99</b>				<b>\$ 211,868.44</b>	<b>126</b>



City of Allegan  
Finance Department  
269.673.5511  
231 Trowbridge Street  
Allegan, MI 49010

## MEMORANDUM

TO: Allegan City Council  
FROM: Tracy Stull, Finance Director/Treasurer  
REVIEWED BY: Joel Dye, City Manager  
DATE: August 24, 2023

SUBJECT: Retirement Plan Review - 2023

### Action Requested:

It is requested that the City Council review and adopt Resolution 23.26 approving an agreement package for the City of Allegan Retirement Plan Services and transferring our recordkeeper from John Hancock to Empower (formerly Great-West Life & Annuity Insurance Company).

### Background:

Annually, staff meets with Stephanie Haralson of Huntington Bank (HNB), who is our Retirement Plan Services Advisor, and we review the retirement plans offered by the city. This year, HNB (Advisors) will be transitioning to OneDigital in the exact same capacity and our current specialists will continue to serve as our advisors under the new company name. HNB/OneDigital continues to advise the City of Allegan on regulatory updates, investments with competitively priced options for our participants. HNB/OneDigital continues to provide us with excellent service and attentiveness to detail.

After this year's Investments Plan Review our Advisors provided us with a Provider Service and Fee Analysis. This analysis shows that we can save employees money on fees by switching our recordkeeper as well as providing more assistance to the city in maintaining and administering these plans.

The attached agreement needs to be adopted to allow us to make the change and move forward with the process of this change. This process will take approximately 90 days to complete.

1. Current: Provider Service and Fee Analysis
  - a. John Hancock – Recordkeeper
  - b. Watkins Ross – TPA
  - c. HNB – Advisor
2. Proposed: Provider Service and Fee Analysis
  - a. Empower (Nations 2<sup>nd</sup> Largest) – Recordkeeper
  - b. Watkins Ross – TPA
  - c. OneDigital – Advisor
3. Process and Timing for change
  - a. 90-day process
  - b. 30-day notices to participants
  - c. Education for participants



City of Allegan  
Finance Department  
269.673.5511  
231 Trowbridge Street  
Allegan, MI 49010

Attachment(s):

Resolution 23.26

Recordkeeper Fee Comparison

EMPOWER Proposal

EMPOWER Plan Package

EMPOWER Agreement Package





**CITY OF ALLEGAN  
RESOLUTION 23.26**

**RESOLUTION TO APPROVE AN AGREEMENT PACKAGE FOR  
RETIREMENT PLAN SERVICES AND TRANSFERRING OUR  
RECORDKEEPER FROM JOHN HANCOCK TO EMPOWER**

Minutes of a regular meeting of the City Council of the City of Allegan, held on, Monday  
August 28, 2023, at 231 Trowbridge, Allegan City Hall, in Allegan, Michigan at 7:00  
p.m.

The following preamble and resolution were offered by Council Member\_\_\_\_\_ and  
supported by Council Member\_\_\_\_\_.

**WHEREAS**, the City of Allegan Money Purchase Plan recordkeeper needs to be  
adopted by the City Council; and

**WHEREAS**, the City of Allegan 457 Plan recordkeeper needs to be adopted by the  
City Council; and

**WHEREAS**, the City of Allegan Retirement Plan recordkeeper, Empower,  
requires an Agreement to be approved by the plan sponsor; and

**WHEREAS**, the City of Allegan Retirement Plan recordkeeper, John Hancock,  
needs to be terminated by the plan sponsor; and

**WHEREAS**, the City of Allegan City Council has approved the Finance Director  
as an authorized signer for the City of Allegan.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of  
Allegan hereby adopts and approves the agreement with Empower to be the recordkeeper  
for the City of Allegan Retirement Plans.

YEAS:

NAYS:

ABSTAIN:

ABSENT:

**Dated:** \_\_\_\_\_

**RESOLUTION DECLARED: ADOPTED/REJECTED**

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Council of the City of Allegan, County of Allegan Michigan at a regular meeting held on Monday, August 28, 2023.

\_\_\_\_\_  
Michaela Kleehammer, City Clerk

**CERTIFICATION**

**I, Michaela Kleehammer, the duly appointed City Clerk of the City of Allegan, Allegan County, Michigan, certify that this is a true and complete copy of a resolution adopted by the City Council of the City of Allegan at a meeting on Monday, August 28, 2023.**

\_\_\_\_\_  
**Michaela Kleehammer, City Clerk**

### City of Allegan 457 Plan

Retirement Plan Services Recordkeeper Fee Comparison						
<b>Total Plan Assets</b>	<b>\$1,040,912</b>	John Hancock			Empower	
<b>Total Plan Participants</b>	<b>29</b>					
		<b>Rate</b>	<b>Total</b>		<b>Rate</b>	<b>Total</b>
		<b>\$</b>	<b>%</b>	<b>\$</b>	<b>\$</b>	<b>%</b>
<b>Recordkeeping, Custody, Trustee Fees</b>						
Annual Base		\$0	0.000%	\$0	\$0	0.000%
Annual Per Participant		\$0	0.000%	\$0	\$0	0.000%
Annual Asset Based		N/A	0.610%	\$6,350	N/A	0.290%
Custody		\$0	0.000%	\$0	\$0	0.000%
Trustee		\$0	0.000%	\$0	\$0	0.000%
<b>GROSS Recordkeeping</b>				\$6,350		\$3,019
Plan Credit/Expense Offset				\$0		\$0
<b>Net Recordkeeping Fee</b>				<b>\$6,350</b>		<b>\$3,019</b>
<b>Total Plan Recordkeeping Expenses</b>			<b>0.61%</b>	<b>\$6,350</b>	<b>0.29%</b>	<b>\$3,019</b>

### City of Allegan Money Purchase Plan

Retirement Plan Services Recordkeeper Fee Comparison						
<b>Total Plan Assets</b>	<b>\$3,293,589</b>	John Hancock			Empower	
<b>Total Plan Participants</b>	<b>46</b>					
		<b>Rate</b>	<b>Total</b>		<b>Rate</b>	<b>Total</b>
		<b>\$</b>	<b>%</b>	<b>\$</b>	<b>\$</b>	<b>%</b>
<b>Recordkeeping, Custody, Trustee Fees</b>						
Annual Base		\$0	0.000%	\$0	\$0	0.000%
Annual Per Participant		\$0	0.000%	\$0	\$0	0.000%
Annual Asset Based		N/A	0.510%	\$16,797	N/A	0.290%
Custody		\$0	0.000%	\$0	\$0	0.000%
Trustee		\$0	0.000%	\$0	\$0	0.000%
<b>GROSS Recordkeeping</b>				\$16,797		\$9,551
Plan Credit/Expense Offset				\$0		\$0
<b>Net Recordkeeping Fee</b>				<b>\$16,797</b>		<b>\$9,551</b>
<b>Total Plan Recordkeeping Expenses</b>			<b>1.61%</b>	<b>\$16,797</b>	<b>0.92%</b>	<b>\$9,551</b>

## **PROPOSAL**

City of Allegan

---

August 3, 2023





Proposal For City of Allegan  
This proposal valid until:

11/3/2023

This Proposal was provided at the request of the plan sponsor or the Plan's advisor on behalf of the plan. The fee information provided in this Proposal is based on the assumptions and/or investment options reflected in the Proposal. This Proposal is invalid if the assumptions and/or investment options are inaccurate or change.

### Plan Assumptions

August 3, 2023

Plan Assets:	\$4,205,389
Annual Contribution:	\$287,000
Plan Participants with a Balance:	75
Total Eligible Employees:	75
Number of Plans:	2
Investment Platform:	Empower Select
General Account Fund:	Series I
Investment Fiduciary:	Plan Advisor
Mapping Strategy:	Target Date
Default Fund:	Target Date

### Fee Summary

	Fee	Paid By
Annual Plan Maintenance (Per Plan)	\$0	Employer
Annual Participant Account Maintenance	\$0	Employer
Asset Based Fee	0.29%	Participant
Installation Fee	Waived	Employer
Average Net Investment Expense	0.31%	Participant

### Additional Plan Services

Trustee/Custodial Services: Great-West Trust Full Custodian	BEL Restoration: N/A
Compliance Services: Watkins Ross	Manual Payroll: N
Auto Enroll: N	Prospectus Fulfillment: N
Fee Levelization: Y	Add'l Participant Notice Delivery: N
TPA Allowance: Y	

For Home Office Use Only		City of Allegan				Version
Group Account Number:	State Situs:	Product Code:	Quote Date:	RSD Name:	Prepared by:	401(k) Version:
	MI	gvmt-401k	8/3/2023 1:59:53 PM	Martin Gomez	mrkbls	v16.2 3/23/2023 6:04:00 AM

## City of Allegan (continued)



## Plan and Participant Fees

Plan Service Fees		
Fee Type	Fee	Paid By
Asset Based Fee	0.29% Annually on All Assets	Deducted from Participant Accounts Quarterly
Participant Account Maintenance	\$0 Per Account Annually	Billed to Plan Sponsor Quarterly
Plan Maintenance	\$0 Annually Per Plan	Billed to Plan Sponsor Quarterly

Annual asset based fees will be calculated based upon an average daily balance.

Participant Transaction Fees		
Transaction fee type	Fee	Paid by
Loan initiation	\$50 per request	Netted From Distribution
Maintenance fee for NEW loans (recurring)	\$50 annually	Deducted from participant accounts quarterly
Withdrawals (including Separation of Service, Retirement, Plan Terminations)	\$65 per request	Netted from withdrawal
Withdrawals for small balance force-outs (de minimus)	\$25 per request	Netted from distribution
Distributions (including In-Service, Hardship, QDRO, Death, Disability)	\$40 per request	Netted from distribution
Express delivery fee	\$40 per request	Netted from distribution
Hardship qualification approval services	\$75 per request	Netted from distribution or participant account
Beneficiary distribution approval services	\$75 per request	Netted from distribution
QDRO approval services	\$400 per request	Netted from distribution
Periodic payment setup	\$50 per request	Deducted from participant accounts
Periodic payment maintenance	\$25 annually	Deducted from participant accounts quarterly

The above recordkeeping fees will be guaranteed for the initial five (5) year contract term from the Effective Date of the Administrative Services Agreement. Material changes (+/- 10%) from assumptions used in pricing (participants, assets, net flow, asset allocations) could void this guarantee.

The Participant Transaction services above will be provided to the Plan unless the plan sponsor elects otherwise.

## City of Allegan (continued)



## Fund Information

			Revenue Sharing Included In Gross/Net Expense Ratio	
Investment Name	Ticker	Gross/Net Expense Ratio	12B-1	Admin
Allspring Core Plus Bond R6	STYJX	0.47/0.30%	0.00%	0.00%
American Century RD Hybrid 2025 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2030 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2035 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2040 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2045 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2050 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2055 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2060 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid 2065 CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Century RD Hybrid In Ret CL 1	N/A	0.23/0.23%	0.00%	0.00%
American Funds Europacific Growth R6	RERGX	0.47/0.47%	0.00%	0.00%
American Funds Inflation Linked Bd R6	RILFX	0.29/0.29%	0.00%	0.00%
American Funds New World R6	RNWGX	0.57/0.57%	0.00%	0.00%
DFA Real Estate Securities I	DFREX	0.20/0.18%	0.00%	0.00%
Fidelity® 500 Index	FXAIX	0.02/0.02%	0.00%	0.00%
Fidelity® International Index	FSPSX	0.04/0.04%	0.00%	0.00%
Fidelity® Mid Cap Index	FSMDX	0.03/0.03%	0.00%	0.00%
Fidelity® Small Cap Index	FSSNX	0.03/0.03%	0.00%	0.00%
Fidelity® US Bond Index	FXNAX	0.03/0.03%	0.00%	0.00%
Invesco Discovery R6	ODIIX	0.65/0.65%	0.00%	0.00%
Janus Henderson Enterprise N	JDMNX	0.66/0.66%	0.00%	0.00%
JPMorgan Equity Income R6	OIEJX	0.45/0.45%	0.00%	0.00%
JPMorgan Large Cap Growth R6	JLGMX	0.51/0.44%	0.00%	0.00%
MFS Mid Cap Value R6	MVCKX	0.63/0.62%	0.00%	0.00%
PGIM High Yield R6	PHYQX	0.38/0.38%	0.00%	0.00%
Undiscovered Managers Behavioral Val R6	UBVFX	0.85/0.80%	0.00%	0.00%

<b>Average Net Expense Ratio</b>	<b>0.31%</b>
----------------------------------	--------------

Not all 12b-1 and Admin fees may flow through the Recordkeeper. A third party may be receiving 12b-1 and/or Admin fee(s) directly that are not reflected above.



General Account Investments	Ticker	Fee Estimate	Allocation to Recordkeeper
Great-West General Account			
Empower Investments Fixed Account Series I	GWAQ35	0.35%	0.00%

For an explanation of the Fee Estimate and the Allocation to Recordkeeper, please see the "General Account Fund and General Provision" disclosure in the Disclosure Section of this document.



## City of Allegan (continued)



## Payments to Others

Financial Professional Services (Included in Plan Pricing)		
Service Provider	Service	Fee
None		

Other Services (Included in Plan Pricing)		
Service Provider	Service	Fee
None		

Empower will pay Revenue Credits to the Plan on a monthly basis. Revenue Credits shall be determined by multiplying the average daily balance in each of the Plan's investment options for the month by the annual rate (prorated for the month) of fund service fees paid to Empower by the investment option or its affiliates as reflected in the Plan's Plan Fee Disclosure Report (A copy of the Plan's most recent Fee Disclosure Report is available on the Plan Sponsor Website). Plan Sponsor directs Empower to allocate any Revenue Credits to Plan Participant accounts proportionately based on the average daily balance of such accounts in the investment option during the month and to invest such amounts based on the Participant's investment elections with respect to future contributions or, if none, the applicable Plan default fund. Revenue Credits shall be determined and allocated within 45 days after the end of the month.

Trustee/Custodial Services (Included in Plan Pricing)		
Service Provider	Service	Fee
Great-West Trust Company	Full Custodian	\$500 Annually

Participant Advice		Opt-In	
Service Provider	Service	Annual Fee	Basis
Advised Assets Group, LLC.	Online Investment Guidance	No Charge	N/A
Advised Assets Group, LLC.	Online Investment Advice	\$0	Per Participant
Advised Assets Group	My Total Retirement Services	0.65% <\$100k 0.55% Next \$150k 0.45% Next \$150k 0.35% >\$400k	My Total Retirement Assets

Online Investment Advice and Managed Accounts services are optional services that are offered by Advised Assets Group, LLC. Each individual participant may elect to enroll in either one of these services. These participant advice fees are only deducted from participant account balances of those that have enrolled in the service.

Plan Sponsor agrees the managed account service fee will be paid for by a Plan Participant unless the following box is selected.

☐ Plan Sponsor Pay



## Disclosures

This document contains estimates of plan expenses and is intended to provide a detailed summary of fees being charged to the plan or its participants to the extent such information is in the Recordkeeper's possession. While it is intended to provide information regarding all material fees, this document may not be comprehensive, and it may not include full information on fees associated with some specially negotiated services or with certain investment options, such as Self-Directed Brokerage Accounts, Life Insurance, Employer Stock, etc. For further fee information, please refer to the relevant service agreements and/or prospectuses, including information that may be needed to comply with Participant Disclosure obligations. As your Recordkeeper, we make no representation as to the completeness or accuracy of materials, such as prospectuses, created and/or provided by a third-party investment provider.

### General

#### Bank Credit Disclosure:

Empower Retirement™ (Empower), or one of its affiliates, may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by Empower are aggregated with credits and/or interest earned by Empower and will be used to defray the aggregate expenses for the maintenance of bank accounts. Empower will not retain credits and/or interest earned in excess of such maintenance expenses.

Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where Plan distribution checks have not been presented for payment by Plan participants. Credits and/or interest (i) begin to accrue on contributions, on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Plan participant instructions and (ii) begin to accrue on distributions, on the date the check is written or on the wire date, as applicable and end on the date the check is presented for payment or when the wire clears against the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

#### Recordkeeping Costs Estimate

Great-West recordkeeping fees are agreed to with the plan sponsor based on the total value of the relationship with the plan. Great-West may provide recordkeeping fee credits in its sole discretion based on criteria as solely determined by Great-West which may include the plan's use of affiliated and non-affiliated funds or products. Such credits may reduce some or all of the recordkeeping fees that would otherwise be charged by Great-West. The average cost of Great-West recordkeeping services without any reduction or offset is \$120.23 per participant for plans less than \$50 million, \$94.42 per participant for plans between \$50m and \$500m and \$70.13 per participant for plans greater than \$500m.

#### Prospectus Delivery:

Employer agrees to accept delivery of prospectuses for the selected investment options through the Plan Sponsor section of the Empower Web site - [www.empower-retirement.com](http://www.empower-retirement.com).

### Fiduciary Disclosures

#### Advised Assets Group (AAG):

If Advised Assets Group, LLC provides services to the Plan under an agreement with Plan Sponsor, it may be a fiduciary and Registered Investment Advisor to the Plan to the extent provided in such agreement.

#### Empower:

Empower is not acting as a fiduciary for this plan



## Investments

### Mutual Fund Expense Ratio:

The Service Provider has entered into agreements with certain funds (or their service providers including advisors, administrators or transfer agents, and underwriters) whereby the Service Provider provides shareholder and/or distribution services and receives compensation from the funds (or their service providers) based on the value of the plan's investment in the funds. This compensation may include fees for administrative and other expenses and/or fees paid under a plan of distribution under SEC Rule 12b-1 ("12b-1 fees"). The fees received by the Service Provider are included in the expense ratio described in the applicable fund's prospectus or similar disclosure document, and reduce the fund's net asset value (NAV). Generally, fees and expenses included in the fund's expense ratio are deducted at regular intervals based on a percentage of the fund's average daily net assets.

### Redemption Fees:

Redemption fees are charged by mutual fund companies to discourage investors from making a short-term "round trip" (i.e., a purchase, typically a transfer, followed by a sale within a short period of time). Many mutual fund companies will impose the fee upon the purchase and subsequent sale occurring within a specified time frame. Please refer to your mutual fund prospectuses for specific redemption fee details.

### Additional Fund Compensation:

Great-West Life & Annuity Insurance Company receives payments from some investment fund families through the Empowering Fund Partnership Program ("EFPP"). Under the EFPP, fund families receive several services based on the EFPP tier in which they participate. These services are provided directly to fund families and include: (i) consideration for inclusion in Empower products developed for some segments of the retirement and IRA market, (ii) inclusion on the Empower Select investment platform, which is available in the small plan recordkeeping market, (iii) a waiver of the connectivity fee described below, (iv) enhanced marketing opportunities, (v) additional reporting capabilities, (vi) collaboration in thought leadership opportunities, (vii) access to meetings with Empower leadership, Empower staff, and the third party advisory and brokerage firms through whom Empower distributes its services, and (viii) access to conferences put on by Empower and Great-West Financial. The yearly fees for EFPP participation are \$1,000,000 for tier 1, \$500,000 for tier 2, and \$250,000 for tier 3. These fees do not vary based on an Empower client's use of the funds offered by the fund family.

For additional information about funds that participate in the fund partner program, please visit <https://docs.empower-retirement.com/advisor/Empowering-Fund-Partnership-Disclosure.pdf>.

Great-West Life & Annuity Insurance Company also receives payments from fund families through a connectivity program (the "Connectivity Program"). The Connectivity Program charges fund families for the cost of administering funds on Empower investment platforms, and for building and maintaining data connections between Empower and the fund family. In 2019, the Connectivity Program charges \$1,000 per investment fund used on recordkeeping and IRA investment platforms. Beginning in May 2019, if a retirement plan begins receiving recordkeeping services through Empower's small plan recordkeeping segment, and the plan offers a fund from a fund family that does not participate in the Connectivity Program or the EFPP, then Empower will assess a supplemental, separate investment access fee to the plan. Depending on the level of investment in the non-participating fund family, the investment access fee charge may be more or less than the fees received under the Connectivity Program from the fund family.

For additional information about funds that participate in the Connectivity Program, please visit <https://docs.empower-retirement.com/advisor/Empowering-Fund-Partnership-Disclosure.pdf>.

### General Account Fund and Guarantee Provisions:

General Account crediting rates are net of cost of capital and expenses, fund and guarantee provisions and any contract series charge, to the extent applicable.

Cost of Capital is the return Great-West Life & Annuity Insurance Company of New York (Great-West) earns on Great-West capital. Great-West is required by regulators to hold capital for the purpose of ensuring Great-West can meet all of its obligations associated with the General Account Fund. The amount of Great-West's capital and required return will fluctuate over time based on regulatory requirements, capital market conditions and the competitive environment.

City of Allegan (continued)



The Fund Provision covers the range of investment expenses that are netted from the crediting rate, such as investment and operating expenses. The Fund Provision is calculated annually in aggregate for all General Account fixed funds offered by Great-West and does not reflect any product or plan specific underwriting adjustments.

The Guarantee Provision covers the range of insurance expenses that are netted from the crediting rate, such as asset defaults, cost of insurance guarantees, and other expenses. The Guarantee Provision is calculated annually in aggregate for all General Account fixed funds offered by Great-West and does not reflect any product or plan specific underwriting adjustments.

A Contract Series Charge may apply to the general account option selected by the plan sponsor. This charge will be explicitly described in the Great-West Investments Fixed Account group annuity contract and is meant to cover expenses related to contract administration, investment management and other services that are provided to the plan pursuant to a separate agreement with the plan. There may be an adjustment to the credited interest rate which is used to reduce the amount for plan recordkeeping/administration services that would otherwise be charged to the plan.

For more information on the General Account Fixed Funds, including termination options, please see your Group Annuity Contract.



### Affiliates and Subcontractors

We are required to disclose certain fees paid between Empower and its related parties (affiliates and subcontractors). This includes compensation paid in connection with the services Empower or its affiliates have agreed to provide to the plan, if the compensation is set on a transaction/incentive basis (such as commissions, soft dollars, or finder's fees) or if the compensation is charged directly against a plan investment and reflected in the investment's net value.

The fees disclosed are not in addition to previously disclosed fees; rather, this information is intended to increase transparency about how Empower uses the fees it receives.

#### Affiliates:

The following entities are affiliates of the Recordkeeper, in that they directly or indirectly control, are controlled by, or are under common control with the Recordkeeper. These affiliates may receive fees from the plan, or from the Recordkeeper or another affiliate for performing certain services for the plan.

Refer to the Itemized Services and Cost section for details regarding affiliate payments.

GWFS Equities, Inc. is an affiliate that receives payments from the Investment Provider. Payments are first paid to GWFS Equities, Inc. which in turn pays the Recordkeeper.

Great-West Capital Management, LLC is an affiliate that receives payments from the Investment Provider.

Great-West Funds, Inc. is an affiliate that receives payments from the Investment Provider.

**Affiliates:** The following are affiliates of Empower, but not all Empower affiliates may pertain to your Plan.

- Advised Assets Group, LLC
- GWFS Equities, Inc.
- EMJAY Corporation
- FASCore, LLC
- Great-West Capital Management, LLC
- Great-West Funds, Inc.
- Putnam Investment Company
- Great-West Trust Company, LLC
- Great-West Life & Annuity of New York

#### Subcontractors:

A subcontractor is any person or entity that is not an affiliate of the Recordkeeper and that is expected to receive \$1,000 or more in compensation for performing one or more services for your Plan under a contract or arrangement with the Recordkeeper. All such subcontractors that receive the specific types of compensation described above are included. All such subcontractors, if any, are listed in the table below, along with the service they provide.

Please refer to the Itemized Services and Cost section for details regarding subcontractor payments.

Company Subcontractor	Service Provided
QDRO Consultants	Plan administration services - QDRO review services



City of Allegan (continued)  
Signature Page

By signing this signature page, the Plan Sponsor, Broker and any other signatories certify that they have received, read and understand this proposed Fee Schedule and Disclosure Statement. All parties understand the proposal assumptions stated above determine the plan's expenses. A change to the assumptions will cause expenses and fees to also change Plan Sponsor understands and agrees to all services and fees identified in this Fee Schedule and agrees to pay all fees according to the Service Agreement to which this Fee Schedule applies. The Plan Sponsor further understands that all payroll deduction and matching contributions will be remitted electronically using the Plan Service Center system. Contributions received using any other method will be returned unallocated for resubmission via the Plan Service Center and will not be considered plan assets until such resubmission. Plan Sponsor also understands that no payroll deduction contributions may be withheld until there is a signed Plan Document in place and no contribution or transfer of assets will be accepted earlier than 15 days from the receipt and acceptance of the Client Application in Greenwood Village, CO.

The Plan Sponsor directs Empower to reflect the Advisor and Firm below as the Plan's financial advisor on its recordkeeping system and to provide plan data upon request. The Plan Sponsor understands and agrees that Empower does not provide investment advice to the Plan, the Plan Sponsor or the Advisor regarding Plan investment options.

I agree any changes to products, plan services, fees, or investment options hereafter must be made post-conversion

**Plan Sponsor Signature:**

**Print Name:**

Tracy Stull

**Date:**

DocuSigned by:

**Advisor/Broker Signature:**

**Print Name:**

Stephanie Haralson

**Date:**

8/4/2023

**Additional Plan Information**

\*\*\*\*\*Please complete upon selecting Empower as your provider\*\*\*\*\*

<b>Legal Name of Plan:</b>	City of Allegan, MI		
<b>Plan Headquartered State:</b>	MI		
<b>EIN:</b>	Finance Director/Treasurer		
<b>Plan Year End (MM/DD):</b>	12/31		
<b>Plan Contact for Conversion:</b>	First Name: Tracy		
	Last Name: Stull		
	Phone Number: 269-673-5511		
	Email: tstull@cityofallegan.org		
<b>Is the Financial Representative properly licensed to sell in Headquartered State?</b>	X	Y	N/A

**Core securities, when offered, are offered through GWFS Equities, Inc. and/or other broker dealers.**

GWFS Equities, Inc., Member FINRA/SIPC, is a wholly owned subsidiary of Great-West Life & Annuity Insurance Company.

Empower Retirement™ refers to the products and services offered in the retirement markets by Great-West Life & Annuity Insurance Company (GWL&A), Corporate Headquarters: Greenwood Village, CO; Great-West Life & Annuity Insurance Company of New York, Home Office: White Plains, NY; and their subsidiaries and affiliates. The trademarks, logos, service marks, and design elements used are owned by GWL&A. The Great-West Family of Companies refers to products and services offered through The Great-West Life Assurance Company, London Life Insurance Company, The Canada Life Assurance Company, Irish Life Assurance Company, Great-West Life & Annuity Insurance Company, Putnam Investments, LLC, and their affiliates and subsidiary companies.

# Payment Request Form



## Plan Information

Plan Name City Of Allegan, MI 401a Plan Number \_\_\_\_\_

## Payee Information

EIN/Taxpayer ID   
*EIN/Taxpayer field must be completed for every request.*

☐ New Partner/Payee  
*IRS Form W-9 must accompany this request.*

☒ Existing Partner/Payee  
*EIN and Payee fields are required.*

Payee (Must match name on W-9) \_\_\_\_\_

*You must complete the rest of this section if you are a new partner/payee or if existing partners/payees need to make updates to the information already on file.*

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone # \_\_\_\_\_ Email Address: \_\_\_\_\_  
*(For reporting purposes, a back office email address is recommended)*

☒ Investment Advisory Services Firm - Advisor(s) Name Printed: Stephanie Haralson

☐ Third Party Administrator ("TPA") ☐ Trustee ☐ Auditor ☐ Legal Counsel ☐ Other \_\_\_\_\_

## Form of Payment

☐ ACH Bank Name \_\_\_\_\_

Account Number \_\_\_\_\_ ABA or Routing Number \_\_\_\_\_

☐ NSCC/DTCC Clearing # \_\_\_\_\_ Associated Clearing # (if applicable): \_\_\_\_\_

☐ CHECK (Payment will be mailed to above Payee address.)

## Source, Amount and Frequency of Payment

**Debit Plan Expense Account (PEA)** *If the balance in the PEA is insufficient, payment will generate for balance available.*

If applicable, recurring payment calculation to start as of first day of (month/quarter) \_\_\_\_\_ (year) \_\_\_\_\_.  
*If left blank, payment calculation begins as of the first of the month in which the form was received.*

One Time Flat Dollar Amount \$ \_\_\_\_\_

Recurring Annual Flat Dollar Amount \$ \_\_\_\_\_ prorated and paid ☐ Monthly ☐ Quarterly

One Time Basis Points Payment \_\_\_\_\_

Recurring Annual Basis Points \_\_\_\_\_ prorated and paid ☐ Monthly ☐ Quarterly

Recurring Annual per Participant Charge \$ \_\_\_\_\_ prorated and paid ☐ Monthly ☐ Quarterly

## **Debit Forfeiture Account**

One Time payment of \$ \_\_\_\_\_ prorated across all available money types (including PEA) unless specified below.

☐ Only debit the following specific money type(s) \_\_\_\_\_

## **Debit Participant Accounts**

If applicable, recurring payment calculation to start as of the first day of (month/quarter) \_\_\_\_\_ (year) \_\_\_\_\_.  
*If left blank, payment calculation begins as of the first of the month in which the form was received.*

Flat Dollar Amount \$ \_\_\_\_\_ ☐ One Time ☐ Payment to recur annually - prorated and paid ☐ Monthly ☐ Quarterly

Debit the dollar amount indicated pro-rata or if selected ☐ Per Capita – an identical amount across all accounts.

Basis Points 0.25% ☐ One Time ☒ Payment to recur annually - prorated and to be paid ☒ Monthly ☐ Quarterly

Per Participant Charge \$ \_\_\_\_\_ ☐ One Time ☐ Payment to recur annually - prorated and paid ☐ Monthly ☐ Quarterly

☐ Individual Participant Only \_\_\_\_\_ ☐ Debit participants on attached spreadsheet  
*(Provide full name, social security # and amount) (Provide full names, social security #'s and amounts)*

## Pay Recurring Invoices

Pay this and all future invoices received from the payee listed above when accompanied by a copy of this signed Payment Request Form.  
*To discontinue the payment of invoices for this payee, written notification must be sent to Partner Services at the address listed on page two.*

Select the source you would like to pay invoices from by indicating a "1". To offer flexibility, you can select multiple sources so as exhausted, the next source designated with a "2" will be used and then "3" if applicable. You do not have to select multiple sources.

Plan Expense Account \_\_\_\_\_ Participant Accounts \_\_\_\_\_ debited pro-rata or ☐ Per Capita (identical amounts)

Forfeiture Account \_\_\_\_\_ all money types or ☐ only debit the following specific money type(s) \_\_\_\_\_  
*The forfeiture account will be processed using all money types, including PEA, unless otherwise specified.*



# Payment Request Form



## Reallocate PEA Balance

Reallocate the PEA based on participant balances as of (MM/DD/YYYY) \_\_\_\_\_

Reallocate \$ \_\_\_\_\_. If no amount provided, the PEA balance as of the date of receipt of this request will be used.

*Allocations are processed pro-rata across all money types based on participant balances on the date listed above unless otherwise requested.*

☐ Credit participant accounts on a per-capita basis (identical amounts) across all money types as of the date listed.

*If per capita is selected, please contact your account representative for additional information on the participant list that is required.*

## Plan Representative Authorization

**By signing below, you (the "Authorized Plan Representative") on behalf of the Plan and Plan Sponsor acknowledge and agree that:**

You are authorized to provide the payment instructions reflected on this form on behalf of the Plan and have determined that engaging the services of the Payee for a fee is permissible under applicable law, including U.S. Department of Labor and Internal Revenue Service guidance and the terms of the Plan.

You have determined that the payment from the Plan you have described via this form represents eligible Plan expenses that may be paid from Plan assets in the manner in which you have designated herein and that such expenses are necessary and reasonable costs associated with administration of the Plan. You acknowledge and agree that, to the extent applicable, the Plan fiduciaries have satisfied the disclosure requirements under ERISA §404(a)(5).

You have previously determined an appropriate investment option for the PEA assets, if applicable. If PEA assets are invested in a variable investment option, the amount of PEA assets available to pay plan expenses is limited to 95% of the PEA balance at the time the payment is processed to account for market fluctuation.

In the event that a requested payment from the Plan is to be made to an Investment Advisory Services Firm, you have determined that such direct payment is permissible under applicable law. In the event that a requested payment from the Plan is to be made to the Plan Sponsor, you have determined that the payment does not result in a non-exempt prohibited transaction or other violation of the Code, ERISA or any other applicable law and is otherwise permissible under the terms of the Plan.

The Plan acknowledges and agrees that Empower is not a Plan fiduciary and is acting solely at your direction as a remittance or paying agent, and has not performed any due diligence on any Payee, negotiated the terms of the Payee's compensation, determined the compensation paid by the Plan to the Payee is deemed to be reasonable under applicable law, or advised on the means or manner of remitting the Payee's compensation.

You instruct Empower to reclaim from the Payee any and all funds paid to the Payee over the amount the Payee is entitled to receive per the Plan Sponsor's payment instructions as reflected on this form. You agree that the payment processing services you have authorized via the instructions reflected on this form will be provided by Empower subject to the terms of the recordkeeping services agreement between the sponsoring Employer and Empower.

You may terminate this Authorization at any time by notifying Empower in writing prior to the time that a payment is processed. Any termination of this Payment Authorization will not be effective until written notification is received in good order at the contact information provided below. You acknowledge and agree that Empower is entitled to rely on this Authorization and is released from liability for any payments made pursuant to it.

Upon termination of the recordkeeping services agreement with Empower, recurring monthly payments will not be processed for the month of the scheduled liquidation date or any month thereafter. Quarterly payments will not be processed for the quarter of the scheduled liquidation date. Payments will not be processed from any remaining Plan assets subject to a put or any other applicable liquidation restriction following the Plan's de-conversion.

In the case of a plan termination, recurring flat dollar payments paid monthly will not be paid in the month the termination is effective or any month thereafter. Quarterly payments will not be processed for the quarter in which the termination is effective or any month thereafter. Recurring payments from basis points and per participant charges will continue for any full month or quarter until the plan assets are fully liquidated.

\_\_\_\_\_  
Authorized Plan Representative Signature

\_\_\_\_\_  
Date

Tracy Stull  
\_\_\_\_\_  
Print Name

## Empower Retirement Partner Services Contact Information:

E-mail: [PartnerServices@empower-retirement.com](mailto:PartnerServices@empower-retirement.com)

Fax: (303) 737-1499

Mail: Empower Retirement  
ATTN: Partner Services  
8525 East Orchard Road 9T3  
Greenwood Village, CO 80111



# Payment Request Form



## Plan Information

Plan Name City Of Allegan, MI 457b Plan Number \_\_\_\_\_

## Payee Information

EIN/Taxpayer ID          
*EIN/Taxpayer field must be completed for every request.*

☐ New Partner/Payee  
*IRS Form W-9 must accompany this request.*

☒ Existing Partner/Payee  
*EIN and Payee fields are required.*

Payee (Must match name on W-9) \_\_\_\_\_

*You must complete the rest of this section if you are a new partner/payee or if existing partners/payees need to make updates to the information already on file.*

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone # \_\_\_\_\_ Email Address: \_\_\_\_\_  
*(For reporting purposes, a back office email address is recommended)*

☒ Investment Advisory Services Firm - Advisor(s) Name Printed: Stephanie Haralson

☐ Third Party Administrator ("TPA") ☐ Trustee ☐ Auditor ☐ Legal Counsel ☐ Other \_\_\_\_\_

## Form of Payment

☐ ACH Bank Name \_\_\_\_\_

Account Number \_\_\_\_\_ ABA or Routing Number \_\_\_\_\_

☐ NSCC/DTCC Clearing # \_\_\_\_\_ Associated Clearing # (if applicable): \_\_\_\_\_

☐ CHECK (Payment will be mailed to above Payee address.)

## Source, Amount and Frequency of Payment

**Debit Plan Expense Account (PEA)** *If the balance in the PEA is insufficient, payment will generate for balance available.*

If applicable, recurring payment calculation to start as of first day of (month/quarter) \_\_\_\_\_ (year) \_\_\_\_\_.  
*If left blank, payment calculation begins as of the first of the month in which the form was received.*

One Time Flat Dollar Amount \$ \_\_\_\_\_

Recurring Annual Flat Dollar Amount \$ \_\_\_\_\_ prorated and paid ☐ Monthly ☐ Quarterly

One Time Basis Points Payment \_\_\_\_\_

Recurring Annual Basis Points \_\_\_\_\_ prorated and paid ☐ Monthly ☐ Quarterly

Recurring Annual per Participant Charge \$ \_\_\_\_\_ prorated and paid ☐ Monthly ☐ Quarterly

## **Debit Forfeiture Account**

One Time payment of \$ \_\_\_\_\_ prorated across all available money types (including PEA) unless specified below.

☐ Only debit the following specific money type(s) \_\_\_\_\_

## **Debit Participant Accounts**

If applicable, recurring payment calculation to start as of the first day of (month/quarter) \_\_\_\_\_ (year) \_\_\_\_\_.  
*If left blank, payment calculation begins as of the first of the month in which the form was received.*

Flat Dollar Amount \$ \_\_\_\_\_ ☐ One Time ☐ Payment to recur annually - prorated and paid ☐ Monthly ☐ Quarterly

Debit the dollar amount indicated pro-rata or if selected ☐ Per Capita – an identical amount across all accounts.

Basis Points 0.37% ☐ One Time ☒ Payment to recur annually - prorated and to be paid ☒ Monthly ☐ Quarterly

Per Participant Charge \$ \_\_\_\_\_ ☐ One Time ☐ Payment to recur annually - prorated and paid ☐ Monthly ☐ Quarterly

☐ Individual Participant Only \_\_\_\_\_ ☐ Debit participants on attached spreadsheet  
*(Provide full name, social security # and amount) (Provide full names, social security #'s and amounts)*

## Pay Recurring Invoices

Pay this and all future invoices received from the payee listed above when accompanied by a copy of this signed Payment Request Form.  
*To discontinue the payment of invoices for this payee, written notification must be sent to Partner Services at the address listed on page two.*

Select the source you would like to pay invoices from by indicating a "1". To offer flexibility, you can select multiple sources so as exhausted, the next source designated with a "2" will be used and then "3" if applicable. You do not have to select multiple sources.

Plan Expense Account \_\_\_\_\_ Participant Accounts \_\_\_\_\_ debited pro-rata or ☐ Per Capita (identical amounts)

Forfeiture Account \_\_\_\_\_ all money types or ☐ only debit the following specific money type(s) \_\_\_\_\_  
*The forfeiture account will be processed using all money types, including PEA, unless otherwise specified.*

# Payment Request Form



## Reallocate PEA Balance

Reallocate the PEA based on participant balances as of (MM/DD/YYYY) \_\_\_\_\_

Reallocate \$ \_\_\_\_\_. If no amount provided, the PEA balance as of the date of receipt of this request will be used.

*Allocations are processed pro-rata across all money types based on participant balances on the date listed above unless otherwise requested.*

☐ Credit participant accounts on a per-capita basis (identical amounts) across all money types as of the date listed.

*If per capita is selected, please contact your account representative for additional information on the participant list that is required.*

## Plan Representative Authorization

**By signing below, you (the "Authorized Plan Representative") on behalf of the Plan and Plan Sponsor acknowledge and agree that:**

You are authorized to provide the payment instructions reflected on this form on behalf of the Plan and have determined that engaging the services of the Payee for a fee is permissible under applicable law, including U.S. Department of Labor and Internal Revenue Service guidance and the terms of the Plan.

You have determined that the payment from the Plan you have described via this form represents eligible Plan expenses that may be paid from Plan assets in the manner in which you have designated herein and that such expenses are necessary and reasonable costs associated with administration of the Plan. You acknowledge and agree that, to the extent applicable, the Plan fiduciaries have satisfied the disclosure requirements under ERISA §404(a)(5).

You have previously determined an appropriate investment option for the PEA assets, if applicable. If PEA assets are invested in a variable investment option, the amount of PEA assets available to pay plan expenses is limited to 95% of the PEA balance at the time the payment is processed to account for market fluctuation.

In the event that a requested payment from the Plan is to be made to an Investment Advisory Services Firm, you have determined that such direct payment is permissible under applicable law. In the event that a requested payment from the Plan is to be made to the Plan Sponsor, you have determined that the payment does not result in a non-exempt prohibited transaction or other violation of the Code, ERISA or any other applicable law and is otherwise permissible under the terms of the Plan.

The Plan acknowledges and agrees that Empower is not a Plan fiduciary and is acting solely at your direction as a remittance or paying agent, and has not performed any due diligence on any Payee, negotiated the terms of the Payee's compensation, determined the compensation paid by the Plan to the Payee is deemed to be reasonable under applicable law, or advised on the means or manner of remitting the Payee's compensation.

You instruct Empower to reclaim from the Payee any and all funds paid to the Payee over the amount the Payee is entitled to receive per the Plan Sponsor's payment instructions as reflected on this form. You agree that the payment processing services you have authorized via the instructions reflected on this form will be provided by Empower subject to the terms of the recordkeeping services agreement between the sponsoring Employer and Empower.

You may terminate this Authorization at any time by notifying Empower in writing prior to the time that a payment is processed. Any termination of this Payment Authorization will not be effective until written notification is received in good order at the contact information provided below. You acknowledge and agree that Empower is entitled to rely on this Authorization and is released from liability for any payments made pursuant to it.

Upon termination of the recordkeeping services agreement with Empower, recurring monthly payments will not be processed for the month of the scheduled liquidation date or any month thereafter. Quarterly payments will not be processed for the quarter of the scheduled liquidation date. Payments will not be processed from any remaining Plan assets subject to a put or any other applicable liquidation restriction following the Plan's de-conversion.

In the case of a plan termination, recurring flat dollar payments paid monthly will not be paid in the month the termination is effective or any month thereafter. Quarterly payments will not be processed for the quarter in which the termination is effective or any month thereafter. Recurring payments from basis points and per participant charges will continue for any full month or quarter until the plan assets are fully liquidated.

\_\_\_\_\_  
Authorized Plan Representative Signature

\_\_\_\_\_  
Date

Tracy Stull

\_\_\_\_\_  
Print Name

## Empower Retirement Partner Services Contact Information:

E-mail: [PartnerServices@empower-retirement.com](mailto:PartnerServices@empower-retirement.com)

Fax: (303) 737-1499

Mail: Empower Retirement  
ATTN: Partner Services  
8525 East Orchard Road 9T3  
Greenwood Village, CO 80111

**Certificate Of Completion**

Envelope Id: D8085124433A47F29E7AB84F12F3CDCB

Status: Delivered

Subject: Complete with DocuSign: City of Allegan Standard Proposal 8.3.23pdf.pdf, PEA 401a (002).pdf, PE...

Plan Number:

Category:

Client Service Representative Email:

Client Service Representative Name:

Social Security Number:

Source Envelope:

Document Pages: 15

Signatures: 1

Envelope Originator:

Certificate Pages: 8

Initials: 0

Mark Blessington

AutoNav: Enabled

PO Box 1700

Envelopeld Stamping: Enabled

Denver, CO 80201

Time Zone: (UTC-08:00) Pacific Time (US &amp; Canada)

mark.blessington@empower.com

IP Address: 208.127.69.175

**Record Tracking**

Status: Original

Holder: Mark Blessington

Location: DocuSign

8/4/2023 8:10:26 AM

mark.blessington@empower.com

**Signer Events**

Stephanie Haralson

stephanie.haralson@onedigital.com

Security Level: Email, Account Authentication  
(None)**Signature**

DocuSigned by:



BDFCCEB1E3404C0...

Signature Adoption: Pre-selected Style

Using IP Address: 47.26.211.62

**Timestamp**

Sent: 8/4/2023 8:15:26 AM

Viewed: 8/4/2023 8:16:05 AM

Signed: 8/4/2023 8:32:47 AM

**Electronic Record and Signature Disclosure:**

Accepted: 8/4/2023 8:16:05 AM

ID: 786b58e1-2a09-4740-9058-dde943a56b99

Company Name: Empower

Tracy Stull

tstull@cityofallegan.org

Finance Director/Treasurer

Security Level: Email, Account Authentication  
(None)

Sent: 8/4/2023 8:15:26 AM

Viewed: 8/7/2023 3:30:33 AM

**Electronic Record and Signature Disclosure:**

Accepted: 8/7/2023 3:30:33 AM

ID: 00c02102-de92-4654-9c05-71c3e75b4628

Company Name: Empower

**In Person Signer Events****Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp**

Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/4/2023 8:15:27 AM
Certified Delivered	Security Checked	8/7/2023 3:30:33 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE CONSENT AGREEMENT**

The purpose of this Electronic Record and Signature Consent Agreement (“Agreement”) is to formally agree to receive electronically and use an electronic signature on one or more of the document(s) included in the electronic envelope on the Docusign system (“Document Package”). By accepting this Agreement, you are agreeing that electronic signatures and electronic delivery (*i.e.*, email or posting to a website) are the legal equivalent of an actual physical signature and actual physical delivery, respectively, for purposes of the Document Package.

This Agreement is voluntary. This Agreement is only required if you want to electronically sign and receive the Document Package.

If you do not want to electronically sign and receive the Document Package, do not check the ‘I agree to use electronic records and signatures’ box. If you do not want to electronically sign the Document Package, contact Empower for a standard PDF file that you can print and execute with wet signatures and return via regular mail. If you have any problems accessing PDF documents, contact Empower to discuss alternative arrangements. Note that even if you agree to electronically sign the Document Package, in the future after receiving an electronic document package, you will be able to choose whether or not to electronically sign that document or ask for another version to sign.

Please confirm your acceptance by checking the ‘I agree to use electronic records and signatures’ box. By checking this box, you acknowledge that you have carefully and thoroughly read the information below, you can access this information electronically to your satisfaction, and you agree to these terms and conditions:

### **1. Definitions:**

The words “you” and “your” mean the account owner of the account.

“Empower” and the words “we,” “our,” and “us” mean Empower Annuity Insurance Company of America and its affiliates, successors, and assigns, including but not limited to Empower Life & Annuity Insurance Company of New York, Empower Funds, Inc., Empower Trust Company, LLC, Empower Capital Management, LLC, Empower Advisory Group, LLC, and Empower Financial Services, Inc. as applicable.

2. **Scope of this Agreement:**

This Agreement only applies to the electronic signatures and electronic delivery of the Document Package. This Agreement does not apply to any situation by law or otherwise that requires you to provide written notice or document to us, which must be done on paper unless we provide instruction to you how to deliver the item to us electronically. We may, in our sole discretion, choose to provide you with any document on paper, even if you have authorized electronic delivery.

3. **Electronic Signatures:**

By accepting this Agreement, you consent to use electronic signatures for the Document Package, and you agree that electronic signatures shall be deemed to be legally equivalent to actual physical signatures. The electronic signature process will be facilitated through DocuSign, Inc., which is separate company retained by us to facilitate this service, but has no other affiliation with Empower. One or more electronic documents will be included in an electronic envelope on the DocuSign system and a link to the envelope will be e-mailed to you. These electronic documents may include but are not limited to service and account agreements between you and us, along with transaction forms and other documents related to your account with us.

4. **Authentication and Qualified Security Procedures:**

The electronic signature process through DocuSign provides authentication through the use of a digital audit trail. Generally, “authentication” refers to the act of attributing an electronic signature to the individual that signed the document, and determining that the document has not been changed since its execution.

In order to electronically sign the Document Package, you will need to access a unique link sent to your email address that you provided to us. After signing the Document Package, we will receive a court-admissible “Certificate of Completion.” This “Certificate of Completion” contains a digital audit trail of the transaction, including the signer names, authentication history, digital signatures, email addresses, signer IP addresses, chain of custody (i.e., sent, viewed, signed, etc.), trusted timestamps, geolocation capture of the signer (if provided), and completion status. By accepting this Agreement, you agree that these authentication and qualified security procedures are commercially reasonable.

5. **Electronic Delivery:**

By accepting this Agreement, you agree the electronic delivery of the Document Package emailed to you, is the legal equivalent of actual physical delivery, such as delivery by the United States Postal Service or hand-delivery, whether or not you actually see or view the Document Package. For purposes of this agreement, unless we receive actual notice of a delivery failure, we shall be deemed to have conclusively delivered the Document Package to you when we attach and send the document(s) to the email address that you provided to us.

6. **Updating Your Email Address and Other Contact Information:**

It is your responsibility to provide us with accurate and complete e-mail address and other contact information. You agree to maintain and promptly update any changes in this information.

7. **Withdrawing Your Consent:**

We will ask for your consent each time we present an envelope of electronic documents to you.

Once you give your consent for that envelope, you cannot withdraw it for that envelope but you can still choose not to sign any or all electronic documents included in that envelope. In addition, before you execute an electronic signature in DocuSign, the DocuSign system allows you to exit the electronic signing process. You should inform us that you no longer want to electronically sign and then receive the document(s) in another manner by emailing Empower directly with your request.

#### 8. **Requesting Paper Copies:**

At any time, you may request from us a paper copy of any record that we provided or made available electronically to you. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session. If you elect to create a DocuSign signer account, you may access them for a limited period of time, typically 30 days after such documents are first sent to you.

Additionally, subject to our document retention procedures, you may contact us and request another electronic or paper copy of the Document Package. If you wish for us to send you paper copies of any such documents, you will be charged a \$0.00 per-page fee.

You may request a paper copy of the Document Package by contacting Empower directly with your request.

#### 9. **Required Hardware and Software:**

Operating Systems:	Windows XP, Windows Vista®, Windows® 7, Windows® 8 or higher; Mac OS® X or higher
Browsers:	Final release versions of Internet Explorer® 9.0 or above (Windows only); Mozilla Firefox 35 or above (Windows and Mac); Safari™ 7.0 or above (Mac only), Chrome 40 or above
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files



Screen Resolution:	1024 x 768 minimum
Enabled Security Settings:	Allow per session cookies; Users accessing the Internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

These minimum requirements are subject to change. If these requirements change before the Document Package is fully executed, you will be asked to re-accept this Agreement. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

#### 10. **DocuSign**

-

We have entered into an agreement with DocuSign, Inc. (“DocuSign”) to make their electronic system available to facilitate your receipt and electronic signature of the Document Package. Your use of the DocuSign system is subject to the terms and conditions of DocuSign’s system. We are not responsible for the DocuSign system and we disclaim any representations and all warranties regarding the DocuSign system.

#### 11. **Acknowledgement and Consent:**

To confirm to us that you can access this information electronically, please verify that you were able to read this Agreement and that you also were able to: print on paper or electronically save for your future reference and access, or that you were able to e-mail to an address where you will be able to print on paper or save it for your future reference and access. By checking the ‘I agree to use electronic records and signatures’ box, I confirm that:

- I meet the required hardware and software requirements listed above;
- I can access and read this Agreement;
- I can print on paper the Document Package or save or send the Document Package to a place where I can print it for future reference and access;
- I have read this Agreement and agree to be bound by its terms and conditions.

## 12. **Contacting Empower**

Please contact us to let us know of changes as to how we may contact you electronically, to request paper copies of certain information to us, and to withdraw your consent to receive the Document Package:

To contact us by e-mail: [retirementsolutionservice@empower.com](mailto:retirementsolutionservice@empower.com)

To contact us by phone: 866-317-6586

“EMPOWER” and all associated logos and product names are trademarks of Empower Annuity Insurance Company of America.

©2022 Empower Annuity Insurance Company of America. All rights reserved. [www.empower.com](http://www.empower.com)



# Implementation Packet

**Our commitment to your success starts with the onboarding of your plan. We rely on our expertise and experience, as well as a wide array of resources, to ensure a smooth transition.**



## What to Expect During Implementation

This checklist is provided as an initial sample only, and may not include all the steps required for a plan sponsor to be completed during conversion.

Plan Sponsor Conversion Requirements
Participate in Introductory Call
Participate in Welcome Call. <ul style="list-style-type: none"> <li>✓ Determine payroll contribution submission method with Empower Retirement Implementation <ul style="list-style-type: none"> <li>○ Discuss any file requirements with payroll vendor (if applicable)</li> </ul> </li> </ul>
Issue termination letter to prior recordkeeper and send a copy of the letter to Empower Implementation
Validate and execute Plan Information Package (PIP) reviewed during Welcome Call. <ul style="list-style-type: none"> <li>✓ Return executed Plan Information Package to Empower Implementation, including any PEA documentation.</li> <li>✓ Include approved mapping instructions if not previously provided (for like fund plans only)</li> <li>✓ Provide census data to Empower Implementation if required</li> </ul>
Provide the following to Empower for installation: <ul style="list-style-type: none"> <li>✓ Plan document and, if applicable, adoption agreement</li> <li>✓ All and any amendments to the plan document including 415, PPA and WRERA</li> <li>✓ Summary Plan Description (SPD)</li> <li>✓ Basic Plan Document (BPD)</li> </ul>
Determine if education or transition meetings are necessary. Empower will then ship the appropriate materials.
Forward deconversion contact and or discontinuance paperwork from prior recordkeeper to Empower Implementation. (Implementation will assist in completing the paperwork, and then they will request your signature prior to returning it to the prior recordkeeper.)
Distribute blackout notice and transition guides to all eligible employees.
Participate in Plan Provision Review
Receive confirmation of Plan Service Center (PSC) login ID <ul style="list-style-type: none"> <li>✓ Login and confirm password</li> <li>✓ Complete and return ACH Authorization form</li> </ul>
<ul style="list-style-type: none"> <li>✓ Review Participant Reconciliation.</li> <li>✓ Provide missing participant conversion data not received from prior record keeper</li> <li>✓ Validate and approve loan reconciliation (if applicable) to Empower Implementation</li> </ul>
Schedule appointment with Empower Implementation to setup online services (if applicable) <ul style="list-style-type: none"> <li>✓ Provide Empower Implementation with initial deferral file</li> </ul>
Schedule appointment to submit first contribution to Empower
Communicate information to participants regarding blackout release and PIN letter delivery
Save Empower Account Manager contact information provided post transition

(Govt)

Core securities, when offered, are offered through GWFS Equities, Inc. and/or other broker dealers.

GWFS Equities, Inc., Member FINRA/SIPC, is a wholly owned subsidiary of Great-West Life & Annuity Insurance Company.

Empower Retirement refers to the products and services offered in the retirement markets by Great-West Life & Annuity Insurance Company (GWL&A), Corporate Headquarters: Greenwood Village, CO; Great-West Life & Annuity Insurance Company of New York, Home Office: White Plains, NY; and their subsidiaries and affiliates. The trademarks, logos, service marks, and design elements used are owned by GWL&A.  
©2015 Great-West Life & Annuity Insurance Company. All rights reserved. PT187797 (01/2015)

FOR PLAN SPONSOR/BROKER USE ONLY. Not for use with Plan Participants.



# Authorized Signers

PLAN ACCOUNT NUMBER	EMPLOYER NAME	DIVISION ( IF APPLICABLE)
100385-01	City of Allegan, MI	

## Authorized Signers

As of \_\_\_\_\_, the following representative(s) of the Employer are authorized to sign and provide direction on behalf of the Plan Sponsor and Plan Administrator.

This authorization applies to the execution of service agreements, trust and custodial agreements, implementation documents and any other documents or direction provided for the administration and recordkeeping of the above-referenced Plan. **In addition, the officer signing below is also authorized to sign and provide direction on behalf of the Plan Sponsor and Plan Administrator.**

☐ Original Authorization ☐ Addition(s) ☐ Deletion(s) (no sample required)

SAMPLE SIGNATURE	NAME (PLEASE PRINT)	TITLE

Authorized By:

I represent that I am an Officer of the Employer and have the authority to appoint Authorized Signers for the Plan Sponsor and Plan Administrator.

Officer Signature: \_\_\_\_\_

Name (please print): \_\_\_\_\_

Title: \_\_\_\_\_

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

# Plan service center authorization form

This form is used to request access to the Plan Service Center website(PSC). The PSC is the primary tool used by the plan sponsor and any authorized third parties for online contribution processing, viewing plan and participant data, requesting/downloading plan files and reports, and approving online withdrawals. The new users listed below will receive an email notification when their PSC authorization request is complete.

## PLAN SPONSOR CONTACT INFORMATION

Plan name: City of Allegan 457 Plan	Plan number: 100385-01
Contact name:	
Contact email:	Contact phone:   Ext.:

## PLAN SERVICE CENTER CLIENT ADMINISTRATION AGREEMENT

By signing this form, the plan sponsor agrees that the usernames listed on the following pages are authorized to use the PSC. The plan sponsor hereby agrees to notify each of the usernames listed to maintain the confidentiality of logon and password information provided and to not share such information with any third parties. The plan sponsor is responsible for regular review of the users authorized access to the PSC and providing timely notification to Empower of any access changes including access terminations.

Note: If the plan has pay centers and/or divisions with different contacts, please complete one login form for each pay center and/or division.

## PLAN SERVICE CENTER (PSC) LOGIN REQUEST

To obtain access to plan information through PSC, complete the following (additional pages may be attached if needed). See the *User type & access options* section for detailed access level options and descriptions.

Name:	Current PSC username: (if applicable)
Email address:	Phone:
Secure PIN: ____ ____ ____ ____ <i>We recommend using the last four digits of your SSN as your pin, which will be used for caller authentication.</i>	
Subsets <input type="checkbox"/> All; OR (if applicable): <input type="checkbox"/> Restrict access to: Divisions(s): _____ Pay center(s): _____	
<b>User type &amp; access options:</b> <i>Please select only one option and indicate the required access by selecting the appropriate options.</i>	
<input checked="" type="checkbox"/> <b>Sponsor/plan employee</b>	
<input checked="" type="checkbox"/> <b>Standard access provides the ability to have:</b>	
1) <b>Participant/Payroll access:</b> <i>Add/edit plan and participant data, process payroll, pay plan expenses and update plan banking information.</i>	
2) <b>Compliance access:</b> <i>Add/edit and submit compliance 5500 testing information and corrective distributions.</i>	
3) <b>To do list access:</b> <i>Approve participant withdrawal requests, plan/participant notifications and participant enrollments.</i>	
4) <b>File-sharing access:</b> <i>View, upload or delete files.</i>	
5) <b>Reporting access:</b>	
<b>OR</b>	
<input type="checkbox"/> <b>Alternative access:</b> <i>If the user should <u>not</u> have the standard access described above, please select the appropriate level of access for each of the below categories (<b>File-sharing access</b> and <b>Reporting access</b> will be included by default):</i>	
1) <b>Participant/Payroll access:</b>	
<input type="checkbox"/> <b>Add/edit</b> participant and plan data only. No payroll, plan expense or banking information access	
OR	
<input type="checkbox"/> <b>View only</b> for participant and plan data. No payroll, plan expense or banking information access	
2) <b>Compliance access:</b>	
<input type="checkbox"/> No compliance access	
3) <b>To do list access:</b>	
<input type="checkbox"/> No to do list access	
<input type="checkbox"/> <b>Auditor standard access:</b>	
<b>Provides the ability to view plan and participant information and reports, view compliance 5500 information (if applicable), and upload access to file sharing.</b>	

Name:	Current PSC username: (if applicable)
Email Address:	Phone:
Secure PIN: ____ We recommend using the last four digits of your SSN as your pin, which will be used for caller authentication.	
Subsets <input type="checkbox"/> All; OR (if applicable): <input type="checkbox"/> Restrict access to: Divisions(s):      Pay center(s):	
<p><b>User type &amp; access options:</b> <i>Please select only one option and indicate the required access by selecting the appropriate options.</i></p> <p><input type="checkbox"/> <b>Sponsor/plan employee</b></p> <p style="margin-left: 20px;"><input type="checkbox"/> <b>Standard access provides the ability to have:</b></p> <ul style="list-style-type: none"> <li>1) <b>Participant/Payroll access:</b> <i>Add/edit plan and participant data, process payroll, pay plan expenses and update plan banking information.</i></li> <li>2) <b>Compliance access:</b> <i>Add/edit and submit compliance 5500 testing information and corrective distributions.</i></li> <li>3) <b>To do list access:</b> <i>Approve participant withdrawal requests, plan/participant notifications and participant enrollments.</i></li> <li>4) <b>File-sharing access:</b> <i>View, upload or delete files.</i></li> <li>5) <b>Reporting access:</b></li> </ul> <p style="text-align: center; margin: 10px 0;"><b>OR</b></p> <p><input type="checkbox"/> <b>Alternative access:</b> <i>If the user should <u>not</u> have the standard access described above, please select the appropriate level of access for each of the below categories (<b>File-sharing access</b> and <b>Reporting access</b> will be included by default):</i></p> <ul style="list-style-type: none"> <li>1) <b>Participant/Payroll access:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> No payroll, plan expense or banking information access with <b>add/edit</b> participant and plan data</li> <li style="text-align: center; margin: 5px 0;">OR</li> <li><input type="checkbox"/> No payroll, plan expense or banking information access with <b>view only</b> participant and plan data</li> </ul> </li> <li>2) <b>Compliance access:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> No compliance access</li> </ul> </li> <li>3) <b>To do list access:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> No to do list access</li> </ul> </li> </ul> <p><input type="checkbox"/> <b>Auditor standard access:</b></p> <p style="margin-left: 20px;"><b>Provides the ability to view plan and participant information and reports, view compliance 5500 information (if applicable), and upload access to file sharing.</b></p>	



## Plan Contact Information

<b>Plan Name: City of Allegan 457 Plan</b>
<b>Company Name: City of Allegan, MI</b>
<b>Plan Number: 100385-01</b>

CONTACT # 1 (please print)				
Name:		Company Name (If different than Company Name listed above):		
Address:				
City:		State:	Zip:	
Phone:		Secure Fax:		
Email:				
Division (Select Appropriate Contact Type(s) by Division/Location): <input type="checkbox"/> <b>Check this box if divisions do not apply</b> <i>(Do NOT complete this section if Divisions do not apply. Skip to Contact Type below.)</i>				
Division/Location Name: <input type="checkbox"/> All If division specific indicate below.		Division Number: <input type="checkbox"/> All If division specific indicate below.		
Division/Location Name:		Division Number:		
Division/Location Name:		Division Number:		
Division/Location Name:		Division Number:		
Contact Type (Select Appropriate Contact Type(s) by Division/Location):				
BILLING: <input type="checkbox"/>	REPORTS: <input type="checkbox"/>	LOAN: <input type="checkbox"/>	OFFICER: <input type="checkbox"/>	AUTHORIZED SIGNER: <input type="checkbox"/>
PRIMARY: <input type="checkbox"/>	PAYROLL: <input type="checkbox"/>	SECONDARY: <input type="checkbox"/>	TRUSTEE: <input type="checkbox"/>	COMPLIANCE: <input type="checkbox"/>

Please complete the contact information currently applicable to your plan. If further contacts are required, please make additional copies of this section.

These individuals will be set up as the main contacts on our recordkeeping system If questions should arise with regard to their particular function. There must be an individual associated with each Contact Type if applicable for your plan. Descriptions of the different Contact Types as well as information on whether the contact is re quired for your plan can be found below.

Plan Number: 100385-01

**CONTACT #2 (please print)**

Name:

Company Name *(If different than Company Name listed above):*

Address:

City:

State:

Zip:

Phone:

Secure Fax:

Email:

Division *(Select Appropriate Contact Type(s) by Division/Location):*

☐

**Check this box if divisions do not apply**

***(Do NOT complete this section if Divisions do not apply. Skip to Contact Type below.)***

Division/Location Name: ☐ All If division specific indicate below.

Division Number: ☐ All  
If division specific indicate below.

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

**Contact Type (Select Appropriate Contact Type(s) by Division/Location):**

BILLING: ☐

REPORTS: ☐

LOAN: ☐

OFFICER: ☐

AUTHORIZED SIGNER: ☐

PRIMARY: ☐

PAYROLL: ☐

SECONDARY: ☐

TRUSTEE: ☐

COMPLIANCE: ☐

Plan Number: 100385-01

**CONTACT #3 (please print)**

Name:

Company Name *(If different than Company Name listed above):*

Address:

City:

State:

Zip:

Phone:

Secure Fax:

Email:

Division *(Select Appropriate Contact Type(s) by Division/Location):*

☐

**Check this box if divisions do not apply**

***(Do NOT complete this section if Divisions do not apply. Skip to Contact Type below.)***

Division/Location Name: ☐ All If division specific indicate below.

Division Number: ☐ All  
If division specific indicate below.

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

**Contact Type (Select Appropriate Contact Type(s) by Division/Location):**

BILLING: ☐

REPORTS: ☐

LOAN: ☐

OFFICER: ☐

AUTHORIZED SIGNER: ☐

PRIMARY: ☐

PAYROLL: ☐

SECONDARY: ☐

TRUSTEE: ☐

COMPLIANCE: ☐

Plan Number: 100385-01

**CONTACT # 4 (please print)**

Name:

Company Name *(If different than Company Name listed above):*

Address:

City:

State:

Zip:

Phone:

Secure Fax:

Email:

Division *(Select Appropriate Contact Type(s) by Division/Location):*

☐ **Check this box if divisions do not apply**  
***(Do NOT complete this section if Divisions do not apply. Skip to Contact Type below.)***

Division/Location Name: ☐ All If division specific indicate below.

Division Number: ☐ All  
If division specific indicate below.

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

**Contact Type (Select Appropriate Contact Type(s) by Division/Location):**

BILLING: ☐

REPORTS: ☐

LOAN: ☐

OFFICER: ☐

AUTHORIZED SIGNER: ☐

PRIMARY: ☐

PAYROLL: ☐

SECONDARY: ☐

TRUSTEE: ☐

COMPLIANCE: ☐

Plan Number: 100385-01

**CONTACT #5 (please print)**

Name:

Company Name *(If different than Company Name listed above):*

Address:

City:

State:

Zip:

Phone:

Secure Fax:

Email:

Division *(Select Appropriate Contact Type(s) by Division/Location):*

☐

**Check this box if divisions do not apply**

***(Do NOT complete this section if Divisions do not apply. Skip to Contact Type below.)***

Division/Location Name: ☐ All If division specific indicate below.

Division Number: ☐ All  
If division specific indicate below.

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

Division/Location Name:

Division Number:

**Contact Type (Select Appropriate Contact Type(s) by Division/Location):**

BILLING: ☐

REPORTS: ☐

LOAN: ☐

OFFICER: ☐

AUTHORIZED SIGNER: ☐

PRIMARY: ☐

PAYROLL: ☐

SECONDARY: ☐

TRUSTEE: ☐

COMPLIANCE: ☐

## CONTACT TYPE DESCRIPTIONS

Billing:	<i>Description:</i> Contact for billing questions and to receive invoices and billing correspondence if applicable. <b>Please limit to one (1) contact.</b>	
Primary:	<i>Description:</i> Contact to receive daily correspondence (i.e. approval of participant distributions, employer-related inquiries, etc.).	Required
Reports:	<i>Description:</i> Contact to receive the quarterly and annual plan summary electronically via the Plan Service Center, which notes assets and participant detail. This report is often used for plan audits.	Required
Payroll:	<i>Description:</i> Contact responsible for remitting payroll contributions.	Required
Loan:	<i>Description:</i> Contact to receive loan information and loan reports.	Required if loans are allowed
Secondary:	<i>Description:</i> Contact responsible as a backup contact to the Primary contact.	Required
Officer:	<i>Description:</i> Executive Contact (i.e., Authorized Signer) responsible for signing all legal documents (e.g., plan-related documents, etc.).	Optional
Trustee:	<i>Description:</i> Contact responsible for any trustee-related issues.	Required if plan is Trustee
Authorized Signer:	<p><i>Description:</i> Contact is authorized to sign on the plan's behalf for participant distributions, incoming rollovers and general plan changes. These contacts are authorized to sign on behalf of the Plan Administrator whenever the signature of the Plan Administrator or Authorized Plan Administrator is required. In cases where paper distributions are authorized by the plan, a comparison of the authorized plan contact's signature to the signature on file will be conducted to ensure distributions are appropriately authorized. <i>(We recommend that at least two representatives be authorized to sign.)</i></p> <p><b>Please ensure that the individuals noted on this form as an Authorized Signer are also listed on the Signature Authorization Form.</b></p>	Required
Compliance:	<i>Description:</i> Contact responsible for sending and receiving compliance-related materials and uploading census files (if applicable). <b>Please limit to one (1) contact.</b>	Optional depending on plan type



# Plan investment fiduciary authorization form 3(38)

**PLAN NAME: CITY OF ALLEGAN 457 PLAN**

**PLAN SPONSOR: CITY OF ALLEGAN, MI**

The Plan Sponsor directs Great-West Life & Annuity Insurance Company and its affiliates (collectively "Empower Retirement") to accept direction with respect to plan investments from the Authorized Plan Investment Fiduciary(ies) listed below including the execution of investment contracts on behalf of the Plan Sponsor. The Plan Sponsor certifies that such Authorized Plan Investment Fiduciary(ies) have been appointed as Plan fiduciaries in accordance with the terms of the Plan and applicable law. The Plan Sponsor agrees that any direction received from an Authorized Plan Investment Fiduciary will be treated as direction from the Plan Sponsor under the terms of the administrative services agreements with Empower Retirement. The Plan Sponsor further agrees that such authorization will remain in effect until the Plan Sponsor notifies Empower Retirement otherwise.

## AUTHORIZED PLAN INVESTMENT FIDUCIARY(IES)

Investment Firm Name \_\_\_\_\_

\_\_\_\_\_  
Authorized Signer Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Authorized Signer Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Authorized Signer Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Authorized Signer Name

\_\_\_\_\_  
Signature

The Plan Sponsor authorizes the Investment Firm to add, change and remove the Investment Firm Authorized Signers listed above.

Plan Sponsor Signature \_\_\_\_\_

Name (please print) \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

# PartnerLink authorization form

This form is used by the Plan Sponsor named below to request authorization for its financial professionals and third party administrators (TPAs) to establish user IDs and passwords for access to the PartnerLink System (PartnerLink). PartnerLink is the primary tool used by the Plan's financial professionals and TPAs for online contribution processing, obtaining plan and participant data and requesting/downloading plan files and reports. A completed PartnerLink authorization form provides the financial professional and their firm with access to the data you authorize below. The Plan Sponsor represents that the financial professional and firm provide services to the Plan under a separate agreement with the Plan Sponsor and that the financial professional and firm require access to Plan data to provide such services. The Plan Sponsor identified below agrees to notify Empower in the event that any of the below users' or firms' access is terminated. The identified users and firms listed below will receive an email notification when their authorization request has been completed.

## PLAN SPONSOR CONTACT INFORMATION

Plan Name: City of Allegan 457 Plan	Plan Number: 100385-01
Plan Sponsor Name:	
Email:	Phone/Ext:

## FINANCIAL PROFESSIONAL PARTNERLINK LOGIN REQUEST (SEE BELOW FOR TPA)

To obtain access to plan information through PSC, please complete the following. If you are requesting access for multiple individuals, additional users may be included in the attached Addendum. **Please see Appendix A for detailed access level options and descriptions.** If no box is checked, Default Plan Access as defined in appendix A will be provided.

Financial Professional Name:		Current PSC username (if applicable)
Email Address:		Phone:
Secure PIN: _____ We recommend using the last four digits of your SSN as your PIN, which will be used for caller authentication.		
User Type: Check One	Financial Professional: <input type="checkbox"/> Firm Name:	Administrative Staff: <input type="checkbox"/> Firm Name:
1) Default Plan Access as defined in Appendix A is provided for all login requests.		
2) Participant data access: Select an option; access will not be provided if a selection is not made.		<input type="checkbox"/> No participant data access <input type="checkbox"/> View participant data and order reports <input type="checkbox"/> View, add, edit participant data and order reports <input type="checkbox"/> View, add, edit participant data, order reports, and process payroll
3) Compliance Access: Select an option; access will not be provided if a selection is not made.		<input type="checkbox"/> No Compliance 5500 access <input type="checkbox"/> View Compliance 5500 <input type="checkbox"/> View, add, edit, submit Compliance 5500



4) <b>To Do List Access:</b> Select an option; access will not be provided if a selection is not made.		<input type="checkbox"/> No To Do List access	<input type="checkbox"/> View To Do List without email reminders	<input type="checkbox"/> View To Do List with email reminders	<input type="checkbox"/> View, edit, approve To Do List
5) <b>File Sharing:</b> Select an option per category; access will not be provided if a selection is not made.					
Auditor Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files	
Client/External Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files	
Compliance Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files	
Conversion Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files	
Trustee Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files	
Payroll Records Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files	
Vault Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files		

### PLAN INVESTMENT FIDUCIARY 3(38) LOGIN REQUEST

To obtain access to Plan information through PSC, please complete the following (addendums may be attached as needed).

**Please see Appendix A for detailed access level options and descriptions.** If no box is checked, Default Plan Access as defined in appendix A will be provided.

Plan Investment Fiduciary 3(38) Name:		Current PSC Username (if applicable)	
Email Address:		Phone:	
Secure PIN: _____ We recommend using the last four digits of your SSN as your PIN, which will be used for caller authentication.			
User Type: Check One	Plan Investment Fiduciary <input type="checkbox"/>	Administrative Staff <input type="checkbox"/>	
	Firm Name:	Firm Name:	
1) Default Plan Access as defined in Appendix A is provided for all login requests.			
2) <b>Participant Data Access:</b> Select only one option; access will not be provided if a selection is not made.		<input type="checkbox"/> No participant data access <input type="checkbox"/> View participant data and order reports <input type="checkbox"/> View, add, edit participant data and order reports <input type="checkbox"/> View, add, edit participant data, order reports, and process payroll	
3) <b>Compliance Access:</b> Select only one option; access will not be provided if a selection is not made.		<input type="checkbox"/> No Compliance 5500 access <input type="checkbox"/> View Compliance 5500 <input type="checkbox"/> View, add, edit, submit Compliance 5500	

<input type="checkbox"/> No To Do List access 4) <b>To Do List Access:</b> Select only one option; access will not be provided if a selection is not made. <input type="checkbox"/> View To Do List without email reminders <input type="checkbox"/> View To Do List with email reminders <input type="checkbox"/> View, edit, approve To Do List				
5) <b>File Sharing:</b> Select only one option per category; access will not be provided if a selection is not made.				
Auditor Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files
Client/External Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files
Compliance Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files
Conversion Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files
Trustee Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files
Payroll Records Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	<input type="checkbox"/> View, upload, and delete files
Vault Folder	<input type="checkbox"/> No access	<input type="checkbox"/> View files	<input type="checkbox"/> View and upload files	

### THIRD PARTY ADMINISTRATOR (TPA) FIRM LEVEL PARTNERLINK LOGIN REQUEST

To permit TPA Firm-level user access to your plan, please complete the following (addendums may be attached as needed):

TPA Firm Name and Tax Identification Number:		TPA Contact Person:	
Email Address:		Phone:	
The default setup for your TPA firm is to provide full access to PartnerLink, the to do list, and File Sharing. This access gives your TPA the ability to view and update participant information, view Plan information, order reports, view and share files. It also gives your TPA firm the ability to authorize or update items on the To Do List depending on the workflow selected. If you wish to add payroll process access or to limit your TPA's access to Inquiry level only, please select below.			
1) <b>Access Options for TPA Firm:</b> Select an option;		<input type="checkbox"/> Default Setup as listed above <input type="checkbox"/> View only access to plan and participant data, and reports	
2) <b>Process Payroll:</b> Select an option; access will not be provided if a selection is not made.		<input type="checkbox"/> No payroll processing <input type="checkbox"/> Yes, grant payroll processing access	

**\*\*TPAs must use the TPA Authorization Form for Individual User Access to PartnerLink in order to give individual TPA employees or representatives individual-level access to PartnerLink\*\***



## PARTNERLINK PLAN SPONSOR ADMINISTRATION AGREEMENT

With respect to the TPA Firm-level Authorization, the Plan Sponsor represents that the TPA is responsible for providing certain administrative and compliance services for the plan under a separate agreement. In order to implement such services, the Plan Sponsor hereby authorizes the Service Provider to grant the TPA access to plan and participant information stored on the recordkeeping system or to reports produced by the Service Provider. Such access permits the TPA to update plan and participant information.

The Plan Sponsor has, in a separate agreement, authorized the TPA as its limited agent and hereby directs the Service Provider to construe such directions or certifications by the TPA as Plan Sponsor instructions.

If the separate agreement between the Plan Sponsor and the TPA is terminated for any reason, the Plan Sponsor shall notify the Service Provider within five (5) business days of such termination, appoint a successor TPA eligible to participate in the Service Provider's TPA program within ninety (90) days after the agreement is terminated and direct the terminated TPA to transfer the plan's records to the successor TPA selected by the Plan Sponsor.

By signing this form, the Plan Sponsor hereby agrees to the terms and to the responsibilities outlined as the PartnerLink website Terms and Conditions of Use on PartnerLink. The Plan Sponsor also agrees that the users and firms listed below are authorized to use PartnerLink.

Further, the plan sponsor hereby agrees to notify each of the users and firms listed to maintain the confidentiality of Logon and password information provided by PartnerLink and to not share such information with any third parties. By signing below, I certify that I am authorized to sign on behalf of the plan sponsor and plan referenced above.

Note: If the plan has pay centers and/or divisions with different contacts, please complete one login form for each pay center and/or division.

### Internal Use Only:

Commission Account Number: \_\_\_\_\_

Seller Service ID (Broker-Dealer Level Access Only): \_\_\_\_\_

Are the users identified above granted authorization to access compensation information? Yes ☐ No ☐



### **ADDENDUM: MULTIPLE FINANCIAL PROFESSIONAL USER ACCESS REQUEST**

Use this addendum to obtain access to plan information through PSC for multiple financial professionals simultaneously. Access to plan information will be provided to each of the authorized individuals listed in the Addendum at the access level options specified by the selections you make in sections 1 – 5 within “Financial Professional PartnerLink Login Request” above. For any users requiring access to plan information at a level other than that chosen above, please complete and submit a separate PartnerLink authorization form, including Addendum if needed.

[illegible]

## Appendix A: Access Options and Descriptions

**Default plan access:** Default is required for all users and cannot be removed.

1) **Default:** Provides the ability to view plan information and order plan reports. Access to participant data is not provided by default and is optional as outlined below.

**Participant data access options:** Participant Data Access is optional and one of the following access levels from each group can be requested in addition to default access.

2) **Participant data and payroll processing:** Provides the ability to view participant data, order reports, add/edit participant data, and process payroll.

- View participant data and order reports
- View, add, and edit participant data and order reports
- View, add, and edit participant data, order reports, and process payroll (Please note: Payroll processing provides the authority to debit applicable bank accounts to fund participant contributions.)

3) **Compliance 5500 information:** Provides the ability view, edit, and submit compliance 5500 testing information and corrective distributions.

- View compliance 5500 information, results, and corrective distributions
- View, add, edit, and submit compliance 5500 information, approve compliance corrective distributions

4) **To do list:** Provides the ability to view, edit, and approve participant withdrawal requests and plan/participant notifications.

- View participant To Do List items and notifications without email reminders
- View participant To Do List items and notifications with email reminders
- View, edit, and approve participant To Do List items and notifications with email reminders

**Additional access options:** The following access levels are optional.

5) **File Sharing:** Provides the ability to securely share files and provides several folder category options to organize, view, upload, and manage files. For each File Sharing category, the following options are available.

- Auditor folder, Client External folder, Compliance folder, Conversion folder, Payroll Records folder, Trustee folder
  - View files
  - View and upload files
  - View, upload, and delete files
- Vault Folder
  - View files
  - View and upload files

This Automatic Rollover Services Agreement, which includes and incorporates the terms of amendment(s) and exhibit(s), if any, attached hereto ("*Agreement*") is between Millennium Trust Company, LLC, an Illinois limited liability company ("*Custodian*"), and the undersigned plan fiduciary ("*Plan Fiduciary*") which is the Plan Sponsor or the Plan Administrator (as that term is defined in Section 3(16) of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*"), or similar state law in the case of a plan not subject to ERISA, of the plan ("*Plan*").

All references in this Agreement to "*we*," "*us*" and "*our*" refer to the Custodian, and all references in this Agreement to "*you*" or "*your*" refer to the Plan Fiduciary. The term Plan also refers to each plan that you may add to this Agreement upon written notice to, and acceptance by, us. This Agreement is effective as of the date of your signed acceptance, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

**1. Purpose.** The Plan provides for certain involuntary distributions of participants' balances in an active and/or terminating Plan. In either case, a Plan participant may avoid such involuntary distribution by directing a distribution be paid directly to (i) an eligible retirement plan or (ii) such participant (a "*Participant Election*"). In those situations where a Plan participant has not made a Participant Election (such non-electing participant, a "*Participant*"), you desire to distribute such Participant's balance from the Plan to an individual retirement account ("*IRA*") custodied by us. All Plan funds that you transfer to us, including those from eligible uncashed benefit distribution checks, will be held by us in IRAs for Participants as provided in this Agreement.

**2. Your Responsibilities.** You or your authorized agent will be responsible to direct us to open IRAs to receive automatic rollover distributions from the Plan on behalf of Participants. You or your authorized agent will make any such direction through an individual authorized to act for the Plan Fiduciary or authorized agent. The direction will include:

(a) Information requested by us necessary to establish an IRA for each Participant, which includes, without limitation, the Participant's (i) full name, (ii) full date of birth, (iii) current address on the books and records of the Plan, (iv) complete United States Social Security Number, and (v) any information reasonably requested by us to assist us in locating Participants the Plan has been unable to locate ("Account Opening Information"); and

(b) Information on the amount of the automatic rollover distribution for each Participant (which shall be in cash only, unless specifically agreed otherwise) from the most recent records of the Plan.

We will treat each Plan as: (i) an active plan, (ii) a defined contribution plan, and (iii) not including designated Roth accounts, unless in each case you or your authorized agent inform us otherwise, in writing. For rollovers from a Plan that includes designated Roth accounts, you or your authorized agent agree to identify which portion of the rollover is to be

placed into a Traditional IRA and which portion is to be placed into a Roth IRA.

You will deliver the Account Opening Information and the funds to be placed in each IRA to us as provided in Section 10 of this Agreement. You or your authorized agent will also provide additional information and data as we may reasonably request, provided that such information is available to you. We will have no obligation to open an IRA for any Participant with respect to which we have received insufficient Account Opening Information.

**3. Our Responsibilities.** Upon receipt of your or your authorized agent's direction and the Plan funds for the IRAs to be established, we will open an IRA on behalf of each Participant based upon the information provided. We will not be liable to you for any action taken by us in good faith and in accordance with any direction from you or your authorized agent. We have no responsibility to ascertain whether any direction received by us is in compliance with the terms of the Plan, ERISA, the Internal Revenue Code of 1986, as amended ("*Code*"), or other applicable state or federal rules, regulations or laws (collectively, "*Laws*").

Upon opening an IRA, if the address provided for the Participant for whom the rollover is made ("*Account Owner*") passes our standard address verification procedures, we will send relevant information and IRA agreements to the Account Owner related to the establishment of the IRA in accordance with the notification and other applicable requirements of ERISA, the Code and Laws. We reserve the right to change, from time to time, our account opening and communication processes.

We will update Account Opening Information with any corrected or updated information that is provided to us by an Account Owner. Except as otherwise required by Laws, we undertake no obligation to verify the accuracy of the information provided by you, your authorized agent or any Account Owner.

**4. Deceased Participants; Escheat.** We cannot open an IRA or receive funds for a Participant known to be deceased at the time of IRA opening. If we discover, or you or your authorized agent informs us, that a Participant of a Plan for whose benefit you established a rollover IRA, died prior to the establishment of the rollover IRA, the intended rollover funds applicable to such Participant will remain assets of the Plan. In this case, you or your authorized agent will direct us regarding the distribution of the deceased Participant's funds. If we do not receive direction from you, we will distribute or escheat such deceased Participant's funds in accordance with our procedure in effect at the time.

**5. IRA.** Each automatic rollover IRA will be a Traditional or Roth IRA, as applicable, based on the information provided by you in Section 2 above. The applicable custodial agreement will be between us and the Account Owner, and its terms will be enforceable by the Account Owner.

**6. Initial Investment of IRA.** Pursuant to Department of Labor ("DOL") regulations in Title 29 of the Code of Federal Regulations Section 2550.404a-2(c)(3)(i)-(iii), you direct us initially to invest the rollover IRA funds in one or more FDIC-insured, interest-bearing bank accounts. After the initial

investment, the Account Owner will have discretion to direct the investment of the IRA.

**7. Fees and Expenses.** You have had the opportunity to review the fee schedule applicable to IRAs established pursuant to this Agreement. We may amend the fee schedule that forms a part of the IRA agreements from time to time as provided in the applicable custodial agreement. The IRA fees and expenses, in effect from time to time, for rollover IRAs established pursuant to this Agreement will not exceed the fees and expenses we charge for comparable IRAs established by us in circumstances other than automatic rollover contributions.

## **8. Representations and Warranties.**

(a) You hereby represent and warrant as follows:

(i) This Agreement has been duly authorized, executed and delivered by you and constitutes a valid and binding agreement of you and the Plan.

(ii) The Plan is intended to be one of the following: (A) a tax-qualified retirement plan described in section 401(a) of the Code; (B) a plan described in section 403(b) of the Code; or (C) a plan described in section 457(b) of the Code maintained by a state or local governmental employer described in section 457(e)(1)(A) of the Code (collectively, a "tax-qualified plan"). You have no reason to believe that the Plan would not be treated as a tax-qualified plan and satisfy the requirements of ERISA (if applicable), the Code and any Laws.

(iii) Any automatic rollover contribution made to us will be made pursuant to the terms of the Plan, the Code and any Laws and is an amount eligible for a direct rollover to an IRA under the Code.

(iv) You have taken all steps necessary to allow us to open IRAs based solely upon the Account Opening Information and to satisfy the safe harbor requirements for an automatic rollover contribution as described in Title 29 of the Code of Federal Regulations Sections 2550.404a-2, 404a-3 and Section 401(a)(31) (B) of the Code, as applicable, and any successor provisions or additional regulatory guidance or Laws that may govern with respect to opening IRAs under this Agreement for active and terminating Plans (collectively, the "Safe Harbor").

(v) You have relied on your own legal counsel and/or other tax/employee benefit professionals for advice in taking actions under the Plan, taking actions to meet the Safe Harbor and in executing this Agreement. You have independently concluded that the arrangement for services described in this Agreement satisfies applicable Laws and you have not relied on us and we have not provided any recommendation, investment, legal or tax advice to you in connection with the IRAs to be established pursuant to this Agreement.

(b) We hereby represent and warrant as follows:

(i) This Agreement has been duly authorized, executed and delivered by us and constitutes our valid and binding agreement.

(ii) Each IRA is intended to constitute a Traditional or Roth IRA under the Code, as applicable.

(iii) The IRA agreements will conform in all material respects to the requirements of the Code and Laws applicable to such rollover IRAs.

(iv) Subject to the accuracy of your representations and warranties made above, the IRAs and the services provided under this Agreement are designed to satisfy Safe Harbor for automatic rollover contributions from the Plan to the IRAs.

**9. Confidentiality.** Each party agrees that all information, including all Account Opening Information, communicated to the other party during the term of this Agreement will be received and held in strict confidence, and will be used only for the purposes of this Agreement, and no such information will be disclosed to third parties by the recipient party, its employees or its agents without the prior written consent of the other party, except that each may share with its respective vendors and agents such confidential information as required for those vendors or agents to carry out their responsibilities with regard to services involving this Agreement, the IRAs and any Custodial Accounts. Each party agrees to take all reasonable precautions to prevent the disclosure to other third parties of such information, including without limitation, the provisions of this Agreement and the IRA agreements, except as expressly provided herein or as may be necessary by reason of subpoena, court order, legal, accounting or regulatory requirements or applicable Laws. You authorize us to release all records and information upon receipt of any request, audit or exam by the DOL, without the need for additional authorization from the Plan or a subpoena or court order from the DOL. We will notify you of any DOL request for information or documents regarding the Plan prior to complying with any such request.

You acknowledge and agree that from and after the establishment of each IRA, (i) all Account Opening Information supplied by you or an authorized agent, concerning the IRA and its Account Owner, including personally identifiable information, constitutes confidential information belonging to the Account Owner, (ii) such confidential information is not your or the applicable Plan's information; and (iii) our responsibilities as to the protection and confidentiality of such information run solely to the Account Owner and not to you or the applicable Plan.

Custodian has implemented and will maintain an information security program that includes security measures it deems appropriate, including, without limitation, technical, physical, administrative and organizational controls, designed to maintain the confidentiality, security and integrity of Account Owner's confidential information, including Account Opening Information and that are designed to be materially consistent with the cybersecurity recommendations released by the DOL on April 14, 2021, as may be amended or updated from time to time.

**10. Computerized Data and Funding Requirements.** You or your authorized agent will provide us with electronic files identifying the individuals for whom IRAs are to be established, together with the corresponding funding amount applicable to each individual, in a format acceptable to us. You agree to aggregate the automatic rollover funds from the Plan, including



those from uncashed checks, and send them to us via wire transfer, or other method as we may require. The transfer of the electronic files and corresponding rollover amounts will serve as evidence of your direction to establish the IRAs for the Account Owners. Each party will use reasonable practices to avoid introducing any viruses into the other's systems by such electronic files. It is the responsibility of each party or its authorized agent to encrypt such electronic files to the extent and in a manner necessary to protect the confidentiality of the information contained in such files.

**11. Authorized Parties.** In addition to the directions provided pursuant to Section 10 of this Agreement, you or your authorized agent may direct us to act upon directions, whether written or oral, by telephone, mail or e-mail, and we may rely upon the direction of any individual whom we reasonably believe is authorized to act on behalf of you or your authorized agent.

**12. Indemnification.** You will indemnify and hold us harmless from any and all liability, claims, damages, costs or expenses (including reasonable attorneys' fees) (collectively "*Damages*") arising from or claimed to have arisen from (a) your breach of this Agreement, including any representation or warranty made by you in this Agreement, except for Damages arising from our negligence, bad faith or willful misconduct; (b) your or your authorized agent's negligence, bad faith or willful misconduct; (c) inaccurate information provided by you or your authorized agent about the Account Owner, the Plan, or the funds transferred to the IRA; or (d) any act or omission by us arising out of or resulting from our execution of any direction provided by you or your authorized agent.

We will indemnify and hold you harmless from any and all Damages arising from or claimed to have arisen from (a) our breach of this Agreement, including any representation or warranty made by us in this Agreement, except Damages arising from you or your authorized agent's negligence, bad faith or willful misconduct; or (b) our negligence, bad faith or willful misconduct.

**13. Limitation of Liability.** In no event shall the terms of the Plan or this Agreement, either expressly or by implication, be deemed to impose upon us any power or responsibility other than those set forth specifically in this Agreement. Nothing in this Agreement is intended to make us a sponsor or administrator of the Plan and, to the contrary, the intent of the parties is that we are not, and will not become, a fiduciary of the Plan under ERISA, the Code or other Laws.

Notwithstanding any other provisions of this Agreement to the contrary, in no event shall either party be liable to the other for any consequential, indirect or special damages of any nature whatsoever. The limitations of liability and exclusion of damages contained in this Agreement are intended to allocate the risks of this Agreement between the parties, is reflected in the pricing of our offering, and is an essential element of the basis of the bargain between the parties.

The terms of these limitations of liability will survive the termination of this Agreement.

**14. Arbitration.** Any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination,

enforcement, interpretation or validity thereof, including any challenge to the making of this Agreement or the determination of the scope or applicability or enforceability of this Agreement to arbitrate, will be determined by arbitration in Chicago, Illinois, to the exclusion of any other venue or forum, before a sole arbitrator, in accordance with the laws of the State of Illinois. The arbitration will be administered by Judicial Arbitration and Mediation Services ("*JAMS*") under its Comprehensive Arbitration Rules and Procedures ("*JAMS Rules*") and will be conducted by a retired judge who is experienced in dispute resolution. No consequential or punitive damages will be awarded. Notwithstanding any other rules to the contrary, no arbitration proceeding brought against us will be consolidated with any other arbitration proceeding without our consent. Judgment may be entered upon any award granted in any arbitration in any court of competent jurisdiction in Chicago, Illinois, or in any other court having jurisdiction. Each party shall pay its own costs, fees and expenses (including legal fees); provided, however, that each shall pay one-half of all fees paid to JAMS and the arbitrator. You agree that you and the Plan may bring claims and disputes to arbitration only in your individual capacity or for the Plan, and not as a plaintiff or class member in any purported class or representative arbitration. The parties specifically agree and acknowledge that the JAMS Consumer Arbitration Minimum Standards do not and shall not apply to any arbitration that arises from this Article. This includes, but is not limited to, any provisions of the JAMS Consumer Arbitration Minimum Standards that allocate the costs and fees associated with the arbitration, that set the venue for the arbitration, or any other provision of those Standards that conflicts with the terms of this Agreement.

**15. Term.** This Agreement may be terminated by either party at any time upon sixty (60) days' written notice. Termination will not affect any IRA previously established pursuant to this Agreement (prior to the expiration of the 60-day notice period).

**16. Miscellaneous.**

(a) This Agreement will be governed by and construed in accordance with the laws of the State of Illinois, to the extent not preempted by controlling federal law. Any controversies, claims, counterclaims, crossclaims, or disputes arising out of or in any way related to this Agreement, whether sounding in tort, contract, equity, or statute, shall be governed by the laws of the State of Illinois, without reference to that state's conflict of law rules or principles. You hereby submit to the jurisdiction of courts of competent jurisdiction located in the State of Illinois.

(b) Neither party will be in breach of this Agreement as a result of, nor will either party be liable to the other party for, liabilities, damages, or other losses arising out of delays in performance caused by circumstances or events beyond the reasonable control of the delaying party.

(c) Any written notice required to be given pursuant to this Agreement will be deemed effective on the earliest of (i) actual receipt, (ii) the next business day following deposit for overnight delivery with a nationally recognized overnight courier service, and (iii) the same day following transmission of an electronic mail message ("E-mail") during regular



business hours, in each case, with fees, if any, prepaid and addressed to the party and/or the Plan's authorized agent, recordkeeper, consultant, servicer, or third party administrator, if any, at the address set forth below or at such other address as that party may notify the other of in writing in accordance with this paragraph.

Under this Agreement, an E-mail transmission is a writing, and the term "address" shall include a party's E-mail address. Each party is entitled to rely on the contact information contained in this Agreement until it has received written notification of a change in such information and has had a reasonable period of time to react to such change. You, your authorized agent or the recordkeeper, consultant, servicer or third-party administrator may provide us with a change of address for the authorized agent, recordkeeper, consultant, servicer, or third-party administrator, respectively.

(d) Either party may assign or transfer this Agreement, or any of its rights and obligations under it upon written notice to the other party, provided the assignee agrees in writing to the obligations of the assigning party set forth in this Agreement.

(e) This Agreement may be amended in any respect and at any time (including retroactively) to comply with the applicable provisions of ERISA, the Code and Laws, without prior notice or consent. This Agreement may be amended for any other reason, which amendment will be deemed effective upon the delivery of the notice of the amendment to you, unless you object thereto by notifying us in writing, within 30 calendar days from the date the notice is delivered.

(f) If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will continue to be fully effective.

(g) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument.

(Signature pages follow)

Failure to check the applicable boxes below and on the Additional Plans page, if attached hereto, may result in delays in the establishment of automatic rollover IRAs.

**Complete Legal Plan Name (No Acronyms)– Required:**

City of Allegan 457 Plan

**Employer Identification Number (EIN)**

38-6004518

**Three-Digit Plan Number (PN) (if applicable):**

**Your Provider Assigned Plan/Contract ID No.(if Applicable)**

100385-01

**Plan Status (Must check one):**

☒ Active Plan      ☐ Terminating Plan

**Plan Type (Must check one):**

☐ Defined Benefit Plan<sup>1</sup>      ☒ Defined Contribution Plan

**PLEASE COMPLETE IF APPLICABLE TO THE PLAN**

**List Service Provider(s) used in connection with this Agreement (if applicable).**

Primary Service Provider/Referral Source  
(Please check one, if applicable):

☒ Recordkeeper      ☐ Consultant  
☐ Third Party Administrator      ☐ Other

Entity Name: **Empower**

Street Address: **8515 E. Orchard Road**

City: **Greenwood Village**

State: **CO**

Zip: **80111**

E-mail:

Attn.:

Phone: **877-694-4015**

**Additional Service Provider (check one, if applicable):**

☐ Recordkeeper      ☐ Consultant  
☐ Third Party Administrator      ☐ Other

Entity Name:

Street Address:

City:

State:

Zip:

E-mail:

Attn.:

Phone:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date of the Plan Fiduciary's acceptance set forth below.

Plan Fiduciary (Entity Name, Not an Individual):

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

Print Name:

Date:

E-mail:

Street Address:

City:


State:

Zip:

Phone:

**Accepted by:**

Millennium Trust Company, LLC

By:   
Signature

Name: Peter Welsh

Title: Head of Retirement Services

Address: 2001 Spring Road, Suite 700  
Oak Brook, IL. 60523

Inquires/Notices should be directed to  
Retirement Services.

E-mail:

We are unable to establish IRAs for participants of terminating defined benefit plans, unless the plan is not covered by the Pension Benefit Guaranty Corporation (PBGC). Most private sector defined benefit plans are covered by the PBGC, but there are some exceptions. It is the Plan Fiduciary's responsibility to determine whether or not the Plan is covered by the PBGC.

## AUTOMATIC ROLLOVER IRA FEE SCHEDULE

*(Fees subject to change)*

### Administration and Custody Account Fees

- Annual Maintenance Fee: \$30 <sup>1</sup>
- Account Closing Fee: \$25 <sup>2</sup>
- Annual Paper Statement Fee: \$10 <sup>3</sup> (No charge for electronic statements)

Millennium reserves the right to assess up to a \$25 per transaction processing fee for handling distributions for deceased accountholders, processing divorce decrees and conducting annual searches for accountholders with missing or unconfirmed addresses after the one-year anniversary of account establishment. Additional fees may also be charged in connection with the custody and processing of certain types of assets.

Fees associated with your Account are payable in accordance with your custodial agreement and will be deducted from the Account. If the balance in the Account at any time after the application of all fees then due, equals or is less than the Account Closing Fee, the Account will be closed and the balance charged as the Account Closing Fee.

### Cash Sweep Program

Account will initially be invested in one or more FDIC-insured, interest-bearing, demand accounts at banks not affiliated with Millennium Trust, which we refer to as the Cash Sweep Program, and any uninvested cash subsequently in the Account (resulting from the sale of an asset, additional contribution or otherwise) will also be invested in the Cash Sweep Program. Net interest is credited to the Account on a monthly basis based on the average cash balance held by the Account in the Cash Sweep Program for that month. The crediting rate is reviewed and revised periodically by Millennium Trust and will exceed the national average of interest rates paid by FDIC-insured depository institutions on savings or similar accounts for the applicable period, as published by the FDIC. You may obtain the current crediting rate by contacting Millennium Trust. For more information on the Cash Sweep Program, including compensation earned by Millennium in connection with the program, see "Cash Sweep Program, Uninvested Funds, Compensation" in your custodial agreement.

<sup>1</sup> The Annual Maintenance Fee covers the establishment and ongoing administration of the account. It is charged upon account establishment and then annually thereafter. If the funded account balance is less than \$250, the Annual Maintenance Fee shall be waived in the first year and thereafter be reduced to \$20.

<sup>2</sup> If at the time of closing, the account balance (prior to the application of any fees then due) is less than \$250, the account closing fee shall be reduced to \$10.

<sup>3</sup> If the funded account balance is less than \$250, the first year's annual paper statement fee will be waived.

**INVESTMENT ADVISORY AND MANAGEMENT  
SERVICE AGREEMENT**

For

**CITY OF ALLEGAN, MI**

(the "Plan Sponsor")

**GROUP CLIENT NUMBER**

**100385-01**

---

This Investment Advisory and Management Service Agreement sets forth the general terms and conditions under which Empower Advisory Group, LLC (hereinafter referred to as “Adviser”) will provide services to the undersigned Plan Sponsor with respect to the employee benefit plan(s) sponsored by Plan Sponsor, as identified in the Schedule A (the “Plan” or “Plans”).

Plan Sponsor is engaging Adviser pursuant to this Agreement to provide investment advisory and analytic services to certain participants in employee benefit plans and other compensation programs and arrangements for which Empower Annuity Insurance Company of America, Empower Plan Services, LLC, or Empower Retirement, LLC (collectively “EAIC” or “Empower”), provides recordkeeping, administrative and other services for Plan Sponsor as set forth in the service agreement between the Plan Sponsor and Empower (“Service Agreement”).

Plan Sponsor maintains the Plan, and on behalf of itself, as Plan Sponsor, and on behalf of the Plan Administrator of the Plan, has the authority to appoint agents and service providers for the Plan.

The Plan Sponsor understands that Adviser has selected Morningstar Investment Management, LLC (“Subadviser”) to serve as an independent financial expert pursuant to Department of Labor Advisory Opinion 2001-09A (and any modifications or amendments thereto), to perform investment services including advisory services and discretionary Managed Account Services, as further described in Schedule B.

NOW, THEREFORE, in consideration of these covenants, mutual representations and agreements contained herein, Adviser and Plan Sponsor agree as follows:

## **1. Definitions**

**“Agreement”** means this Investment Advisory and Management Service Agreement, including any Schedules (“Schedules”) that are attached hereto as of the Effective Date or mutually agreed to in writing by the parties.

**“Advisers Act”** shall mean the Investment Advisers Act of 1940, as amended.

**“Code”** shall mean the Internal Revenue Code of 1986, as amended.

**“ERISA”** shall mean the Employee Retirement Income Security Act of 1974, as amended.

**“Managed Account Participant”** shall mean Participants participating in the Managed Account Service, or its successor service.

**“Managed Account Service”** shall mean Adviser’s discretionary investment advisory service, as further defined in Schedule B.

**“Online Advice Participant”** shall mean Participants using the Online Advice Service by accepting Adviser’s online investment service agreement or terms of use.

**“Online Advice Service”** shall mean Adviser’s non-discretionary investment advisory service, Online Advice, or its successor, as further defined in Schedule B.

**"Opt-out Feature"** shall mean a feature of the Managed Account Service selected by the Plan Sponsor through which Participants, designated by the Plan Sponsor, are automatically enrolled in the Managed Account Service, as further defined in Schedule B.

**"Participant"** shall mean an eligible participant, beneficiary or alternate payee who is eligible for the Services.

**"Plan"** shall mean the employee benefit plan or plans or other compensation programs or arrangements maintained by Plan Sponsor as listed in Schedule A (as the same may be amended in writing by the parties from time to time), and/or separately identified in any Schedule. If more than one Plan is covered by this Agreement, any references herein to the Plan shall mean each of the Plans, unless the context requires otherwise.

**"Plan Administrator"** shall mean the "administrator" of the Plan as that term is defined under Section 3(16)(A) of ERISA and Section 414(g) of the Code, or such comparable person responsible for the administration of the Plan in the event the Plan is not subject to such ERISA or Code provisions.

**"Plan Sponsor"** shall mean the entity identified in the opening paragraph of this Agreement.

**"Rollout Date"** shall mean that date on which Adviser has made all of the services provided under this Agreement available to Participants.

**"Services"** shall mean the specific services with respect to the Plan covered by this Agreement (including the Schedules hereto).

**"Subadviser"** shall mean Morningstar Investment Management, LLC.

## **2. SERVICES PROVIDED BY ADVISER**

**2.1.** This Agreement sets forth the terms and conditions pursuant to which Adviser agrees to provide Services with respect to the Plan pursuant to a Schedule. The terms and conditions of this Agreement shall be deemed to be incorporated by reference into each and every Schedule, without regard to an express reference therein. Adviser acknowledges and agrees that: (i) it is registered with the Securities and Exchange Commission as an investment adviser under the Advisers Act, (ii) it is an investment adviser and fiduciary under the Advisers Act and is a fiduciary under ERISA to the extent it provides Services to Online Advice Participants, and (iii) it is an investment adviser and fiduciary under the Advisers Act and is an investment manager (as defined under Section 3(38) of ERISA) to the extent it provides Services to Managed Account Participants.

**2.2.** The parties specifically agree that no provision of this Agreement or any Schedule will require Adviser to: (i) provide investment advice to Plan Sponsor or Plan Administrator; (ii) exercise any discretionary authority or discretionary control with respect to the management of the Plan; or (iii) have or exercise any discretionary authority or responsibility in the administration of the Plan, including the selection of the Opt-Out Feature of the Managed Account Service (if applicable). Adviser has no discretion or responsibility to interpret provisions of the Plan or to determine eligibility, participation, or the right to receive benefits under the Plan.

**2.3.** Adviser shall take appropriate actions and maintain policies and procedures reasonably necessary to ensure Adviser does not engage in any nonexempt prohibited transaction under ERISA in providing Services hereunder. Adviser's policies and procedures are designed to comply with applicable law, including Department of Labor Advisory Opinion 2001-09A (and any modifications or amendments

thereto), pursuant to which Adviser has delegated certain obligations under this Agreement to Subadviser, as described in Adviser's Form ADV Brochure.

**2.4.** Adviser has authorized Empower Financial Services, Inc. ("**EFSI**"), an affiliate of Adviser, and its licensed agents and registered representatives who are Empower employees (collectively referred to as "**Agents**") to solicit, refer and market Adviser's services. In addition to their salary, such Agents may earn bonus compensation based upon engaging plan sponsors to offer Adviser's services. Other Agents and Adviser representatives may be indirectly compensated through bonus compensation, in addition to their salary, for communication, education and/or assisting Participants to enroll in Adviser's services. Compensation paid to Agents or Adviser representatives does not increase the fees paid by the Plan and/or their Participants.

**2.5.** Nothing in this Agreement is intended to constitute legal or tax advice from Adviser to Plan Sponsor, or to any other party. Plan Sponsor understands that Adviser has not given and may not give legal advice. All issues should be reviewed and discussed with Plan Sponsor's legal counsel and/or tax adviser.

### **3. RESPONSIBILITIES OF PLAN SPONSOR**

**3.1.** Plan Sponsor or its designated agents shall be responsible for providing to Adviser accurate data and information necessary to enable Adviser to perform the Services required under this Agreement, including but not limited to, timely and reasonable notification of employer-initiated events, the information, materials, instructions or other data referenced in any Schedule, and the information reasonably requested by Adviser to enable it to comply with federal law concerning Know Your Customer rules under the USA PATRIOT Act, in such form and at such time as the parties mutually agree. Adviser reserves the right to reject or return any documents, materials, or other information that are unreadable, corrupted, or which Adviser is otherwise unable to process. Plan Sponsor agrees to provide or to assist Adviser in obtaining all participant data that is necessary to perform its duties under this Agreement, including but not limited to: date of birth, income, gender, and state of residence. Plan Sponsor acknowledges that timely receipt of appropriate information is a prerequisite to the performance of Adviser's Services and Adviser shall not be liable for any delay or failure in the performance under this Agreement due to Plan Sponsor's failure to comply with the information submission deadlines established and communicated to Plan Sponsor by Adviser in a timely manner.

**3.2.** Plan Sponsor or Plan Administrator shall make all discretionary decisions with respect to the administration of the Plan relative to the Services and shall direct Adviser in accordance with such decisions. Plan Sponsor shall be responsible for selecting and monitoring the investment options offered through the Plan. In addition, Plan Sponsor agrees, for itself and on behalf of the Plan, that neither Adviser nor Subadviser shall have any authority or responsibility under this Agreement for the selection or monitoring of the Plan's investment options, or the provision of investment advice to Plan Sponsor with respect to the Plan's investment options. Plan Sponsor acknowledges that Empower, as the Plan's recordkeeper, may facilitate the use and awareness of the Services during the Plan enrollment process or as otherwise requested by Plan Sponsor and Empower's call center may refer Participants to Adviser's investment adviser representatives if the call concerns the Plan or their Plan account. Plan Sponsor understands and agrees that, in the event the individual terminates or otherwise un-enrolls from the Managed Account Service, such individual's account shall remain invested in the investment options as selected by the Adviser or Subadviser prior to such termination or un-enrollment and that the individual or Plan Sponsor is responsible for changes to the investment options.

**3.3.** Plan Sponsor shall be responsible for deciding whether to implement the Opt-Out Feature of the Managed Account Service and determining which Participants shall be subject to the Opt-Out Feature and direct Adviser with respect to such decisions. To the extent Plan Sponsor designates the Managed Account Service as the default investment for the Plan, Plan Sponsor shall be responsible for selecting an investment option for purposes of allocating individual accounts until such time as the Adviser begins management of a Managed Account Participant's account; provided, however, in the event the individual is not eligible for the Managed Account Service, such individual's account shall remain invested in the investment options selected by the individual or the Plan Sponsor until the individual or Plan Sponsor directs otherwise.

**3.4.** Under the terms of this Agreement, Plan Sponsor appoints Adviser as an investment adviser or investment manager, as applicable. As an investment manager, Plan Sponsor authorizes Adviser, without limitation, to initiate with Empower buys, sells, reallocations or other investment transactions and to calculate installment distributions, if applicable, under the Plan for Managed Account Participants. Plan Sponsor acknowledges and agrees that each Managed Account Participant will acknowledge Adviser at the time of participation in the Managed Account Service. Any Managed Account Participant enrolled in the Managed Account Service through the Opt-Out Feature or Plan default process will be deemed, by and through the Plan Sponsor, to have so acknowledged Adviser by the Managed Account Participant's continued participation in the Managed Account Service after the applicable deadline by which such Participant was required to have declined participation in the Managed Account Service. Plan Sponsor understands and acknowledges that: (i) Adviser does not affect investment transactions and that investment transactions will be affected by the appropriate party or agent chosen by the Plan Sponsor, including the Plan's trustee or custodian; (ii) Adviser will communicate, through Empower, information to initiate the investment transactions to such parties; and (iii) Empower will make available to Adviser the investment transaction information related to the investment allocations directed by Adviser. Plan Sponsor also agrees that transactions initiated by Adviser on behalf of Managed Account Participants shall not be subject to any Plan limitations or corporate policy restrictions, such as blackout periods (other than a blackout period applicable to all Managed Account Participants at the same time), preclearance requirements, or other transaction restrictions, unless required by law.

**3.5.** Plan Sponsor acknowledges and agrees that it has received and read Adviser's Form ADV Brochure and Brochure Supplement as required by Rule 204-3 of the Advisers Act.

**3.6.** Plan Sponsor understands and agrees that the Plan's investment options shall be held by a custodian or trustee duly appointed by Plan Sponsor. Except with respect to the fee deduction described in Section 4, nothing contained herein shall be deemed to authorize Adviser to take or receive physical possession of any of the assets of the Plan or to confer custody of such assets upon the Adviser within the meaning of Rule 206(4)-2 of the Advisers Act. Adviser does not have any proxy voting or other execution powers under the Plan, the Services, this Agreement or otherwise. Plan Sponsor has designated a person or persons other than Adviser to vote proxies with respect to the Plan's investment options.

**3.7.** Adviser shall be entitled to rely upon and act upon any instruction, certification, direction or approval received (whether in writing, orally, by telephone, voice response system, fax or other teleprocess, or by other electronic means or other medium, including internet or e-mail transmission, acceptable to Adviser) from any person Adviser reasonably believes to be so authorized to provide such instruction, certification, direction or approval. Adviser shall have no duty to inquire or question the accuracy or completeness of any data or instructions provided to it.



**3.8.** Plan Sponsor represents that the Plan is qualified under Section 401(a) of the Code, where applicable, that the Plan Administrator has been duly appointed under the Plan, and that the person executing this Agreement is authorized to do so. Plan Sponsor shall be responsible for maintaining the Plan's documents, including any amendments thereto based upon design modifications, for determining operational compliance of the Plan with Plan documents, and, where applicable, for ensuring that the Plan is qualified under Section 401(a) of the Code and its related trust is tax-exempt under Section 501(a) of the Code. Plan Sponsor will notify Adviser promptly if Plan Sponsor should learn of any facts or of any regulatory action or prospective action which may result in the Plan ceasing to be qualified, where applicable, under Section 401(a) of the Code. Plan Sponsor acknowledges that while Adviser may possess and consult a copy of the Plan, trust agreement or related document(s), the possession or consultation of those documents shall not alter or expand Adviser's responsibilities under this Agreement. If the Services will be offered in a non-qualified plan, Plan Sponsor has reviewed the form of payment of Adviser's fees and determined that it is appropriate given the design and operation of the non-qualified plan.

#### **4. FEES & CHARGES**

**4.1.** Adviser shall be entitled to compensation for the Services it provides in accordance with the fee provisions set forth in the applicable Schedule. Fees will be deducted from the Plan's trust or other funding vehicle, charged to Participant accounts, or invoiced to the Plan Sponsor as elected in the applicable Schedule or directed by Plan Sponsor. Plan Sponsor shall be responsible for determining that fees paid are reasonable expenses of administering the Plan.

**4.2.** Plan Sponsor acknowledges and agrees the Managed Account Service fees will be deducted directly from Managed Account Participant accounts in arrears. Plan Sponsor authorizes Empower to collect these fees on behalf of Adviser and to deduct fees from Managed Account Participant accounts in accordance with the service elections and fees described in Schedule B.

**4.3.** Adviser may provide additional services pursuant to instruction or direction from the Plan Sponsor. Any fees for such additional services will be agreed upon by Adviser and the Plan Sponsor prior to the provision of additional services.

#### **5. CONFIDENTIAL INFORMATION**

**5.1.** In order to perform the Services, both parties may have access to certain information of the other party, including, without limitation, trade secrets, commercial and competitively sensitive information of the party related to business methods or practices, and proprietary software, websites, programming techniques, documentation and training materials owned or licensed by the party ("**Confidential Information**"). For the purpose of clarity, any software or website made available by Adviser, including software licensed by third parties ("**Adviser Software**") is Confidential Information of Adviser. The parties mutually agree to hold all Confidential Information of the other party in confidence and not to disclose any Confidential Information of the other party to anyone except the parties' affiliates, suppliers, and respective personnel in connection with the performance or receipt of Services hereunder or as directed or approved by the other party or its agents. Confidential Information does not include: information that is otherwise in the public domain through no action of the non-disclosing party; information that is acquired by a party from a person other than the other party or its agents without any obligation of confidentiality; or information that is independently developed by a party without reference to the Confidential Information of the other party.

**5.2.** In the event a party is required to make legally required disclosure of the other party's Confidential Information, such party shall notify the other party of the disclosure as soon as reasonably practicable and shall cooperate with any efforts by such party to obtain protective treatment of such Confidential Information to the extent permitted by law. The foregoing shall not apply to (i) broad-based regulatory examinations associated with a party's general business or operations; (ii) disclosures made in conjunction with a law enforcement investigation or inquiry; (iii) or where notice is prohibited by laws. For purposes of Rule 14(b)-1 and Rule 14(b)-2 of the Securities Exchange Act of 1934, as amended from time to time, Plan Sponsor authorizes Adviser, and/or its Affiliates and services providers, to provide the name, address and share position of the Plan with respect to any class of securities registered under the Investment Company Act of 1940 when requested by such SEC registrant for purposes of shareholder meetings. The above-referenced rules prohibit the requesting SEC registrant from using the Plan's name and address for any purpose other than corporate communications of the type contemplated under the rules.

**5.3.** Plan Sponsor authorizes Adviser to disclose Data to Adviser's Affiliates and service providers in connection with Adviser's performance of Services under this Agreement. In addition, Plan Sponsor authorizes Adviser to disclose Data to Plan Sponsor's advisors, third-party administrators, service providers (such as payroll providers) and representatives authorized by Plan Sponsor in writing to receive such Data. Adviser may use and disclose, for benchmarking and research purposes, de-identified Data that is aggregated with other anonymized data of a similar nature across Adviser's client base in a manner that makes such Data unidentifiable to a particular individual or plan. Adviser's current Privacy Notice is attached to this Agreement, but shall not lessen any of Adviser's obligations regarding Personal Data hereunder.

## **6. PRIVACY & DATA SECURITY**

**6.1.** Plan Sponsor acknowledges and agrees that Adviser may receive Participant data from any and all Participants, including those Participants that are not enrolled in the Managed Account Service or the Online Advice Service (as described in Schedule B) and from Plan Sponsor or its authorized agent or advisors. Plan Sponsor authorizes Adviser to obtain all necessary data from Participants, Plan Sponsor, Plan Sponsor's agents or advisors, and Adviser's affiliates, including the Plan's recordkeeper, Empower.

**6.2.** Adviser and Plan Sponsor agree to maintain and hold in confidence all Data and Confidential Information, as applicable, received in connection with the performance of Services under this Agreement. Adviser and Plan Sponsor agree that their collection, use and disclosure of all Data is and will at all times be conducted in compliance with all applicable data protection and/or privacy laws. Each party will implement, support, and maintain appropriate physical and logical security measures designed to secure Data, and will take all commercially reasonable organizational and technical steps to protect against unlawful and unauthorized processing of Personal Data. In accordance with the foregoing, Adviser and/or its Affiliates maintain a comprehensive data security program designed to safeguard Data and access to the Adviser Software and systems.

**6.3.** The parties will promptly notify each other in the event of an Information Security Breach. Such notice shall include: (i) the consequences of the breach, including (without limitation) any potential impact on the other party's security measures, systems, Data, Confidential Information, or the Adviser Software; and (ii) the corrective action taken to remedy the breach. In addition to the foregoing, Plan Sponsor will notify Adviser immediately upon discovering a compromise of the security and/or log-on credentials of any Plan Sponsor employee or agent that has a plan administration role in Adviser's system.

**6.4.** Adviser acknowledges that it is a “financial institution,” within the meaning of Regulation S-P, Privacy of Consumer Financial Information, issued by the Securities and Exchange Commission (“Reg S-P”) along with the GLBA and other applicable federal and state laws. Adviser acknowledges and agrees that Participant information which uniquely identifies a Participant and as provided to Adviser under this Agreement (“Participant Information”) constitutes “personally identifiable financial information,” within the meaning of those federal and state laws. Adviser has adopted a privacy policy, which will apply to Participant Information that may be amended from time to time.

## **7. BUSINESS CONTINUITY & DISASTER RECOVERY**

Adviser will maintain business continuity and disaster recovery procedures to address the security, integrity and availability of the technology, operational, financial, human and other resources required to provide mission-critical Services in the event of a natural disaster or other interruption of normal business operations. Such procedures will be tested at least once annually.

## **8. RECORDS**

Adviser shall retain all records in its custody and control that are pertinent to performance under this Agreement in accordance with its record retention policy and as required by law. Subject to the foregoing, each party agrees to return or destroy the other party’s Confidential Information and Data once it is no longer required for the purpose of performing or receiving the Services, provided that the parties are not obligated to destroy copies of Confidential Information or Data that must be retained for audit, legal or regulatory purposes, or is stored in non-readily accessible electronic format, such as on archival systems; in such cases Adviser’s data protection obligations shall continue until such Data is destroyed in accordance with Adviser’s record retention policy.

## **9. INTELLECTUAL PROPERTY RIGHTS**

**9.1. Plan Sponsor Materials.** As between the parties hereto, excluding Adviser Materials (as defined below), Plan Sponsor shall own all materials, trademarks, tradenames, logos, trade dress, and other Confidential Information provided or made accessible by Plan Sponsor to Adviser for use in providing the Services (collectively, the “**Plan Sponsor Materials**”). Plan Sponsor Materials do not include data and information in the form supplied by Adviser to Plan Sponsor. Plan Sponsor grants to Adviser a limited, revocable right and license to use Plan Sponsor Materials in connection with its provision of the Services.

**9.2. Adviser Materials.** As between the parties hereto, Adviser and its affiliates shall own all materials, documentation, user guides, forms, templates, business methods, trademarks, tradenames, logos, websites, Adviser Software, technology, computer codes, domain names, text, graphics, photographs, artwork, interfaces and other information or material provided by Adviser or its affiliates hereunder (collectively, the “**Adviser Materials**”). Adviser grants to Plan Sponsor a nonexclusive, non-transferable and non-sublicensable license to use the Adviser Materials during the term of the Agreement for purposes of using Adviser’s Services hereunder and subject to the terms and conditions set forth in this Agreement and any terms of use associated with Adviser Software. Plan Sponsor and Plan Administrator shall not, and shall not enable third parties to, reproduce, modify, create derivative works of, or distribute any or all of Adviser’s services or reverse engineer any of the software or other technology related thereto. All rights with respect to the Adviser Materials not specifically granted hereunder are reserved by Adviser.

## 10. LIABILITY & INDEMNIFICATION

**10.1.** Each party agrees to indemnify the other from and against any and all expenses, costs, reasonable attorneys' fees, settlements, fines, judgments, damages, liabilities, penalties or court awards asserted by a third party (collectively, "**Damages**") to the extent resulting from the indemnifying party's breach of this Agreement, negligence, breach of fiduciary duty or willful misconduct. Notwithstanding anything to the contrary herein, Adviser shall not be liable to Plan Sponsor for, and Plan Sponsor will indemnify Adviser from and against, any Damages resulting from: 1) any acts or omissions undertaken at the direction of the Plan Sponsor or any agent of any third party authorized by Plan Sponsor to provide direction to Adviser, including but not limited to prior service providers, investment advisors, or any authorized agent thereof, 2) any performance of the Services that is in strict compliance with the terms of this Agreement; or 3) Plan Sponsor's or its designee's failure to provide accurate documents, material, information or data to Adviser or its Affiliates, as applicable, on a timely basis.

**10.2.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.3.** Adviser represents that it maintains error and omissions insurance, a fidelity bond under Section 412 of ERISA, and other appropriate insurance coverage in amounts sufficient to satisfy all material obligations of Adviser for Services under this Agreement.

## 11. DISPUTE RESOLUTION

The parties shall engage in reasonable and good faith discussions to resolve any dispute arising out of or relating to this Agreement. If the parties are unable to agree between themselves, the parties will submit the dispute to non-binding mediation conducted by a private mediator agreed to by both parties. If the parties cannot agree on a mediator, the mediator may be selected by a nationally recognized, independent arbitration or mediation organization to which the parties mutually agree. The costs of mediation shall be borne equally by the parties, and each party shall pay its own expenses. If the parties are unable to resolve the dispute through non-binding mediation, either party may initiate litigation; provided, however, that if one party requests mediation and the other party rejects the proposal or refuses to participate, the requesting party may initiate litigation immediately upon such refusal.

## 12. TERM & TERMINATION

**12.1. Term.** Either party may terminate this Agreement with ninety (90) days written notice to the other party of its intent to terminate, unless terminated in accordance with the applicable provisions of Section 12.2 of this Agreement.

**12.2. Termination.** This Agreement shall terminate automatically in the following circumstances:

**12.2.1** Either party notifies the other that it has determined in good faith that the Agreement is not consistent with its fiduciary duties under ERISA or applicable federal or state law; or

**12.2.2** The Service Agreement for recordkeeping, administrative and other services between Plan Sponsor and Empower terminates or expires; or

**12.2.3** The agreement between Adviser and Subadviser terminates or expires and Adviser is unable to contract with a suitable replacement to serve as a Subadviser.

**12.3. Effect of Termination.** As of the effective date of the termination, Adviser will terminate Participant access to the Services and cease providing any Services to Participants. Plan Sponsor will notify Participants, including Online Advice Participants and Managed Account Participants, of the termination as soon as practicable. Adviser may assist Plan Sponsor in notifying Participants, Online Advice Participants and Managed Account Participants regarding the termination of Services; provided, however, to the extent Plan Sponsor requests such assistance, Adviser reserves the right to charge Plan Sponsor all reasonable fees, costs or expenses incurred by Adviser in connection with the provision of such assistance. Termination of the Agreement does not relieve Plan Sponsor or Managed Account Participants of their respective obligations, if any, to compensate Adviser for Services rendered through the effective date of such termination. If applicable, Adviser shall reimburse Plan Sponsor or Participants for any prepaid amounts that relate to the provision of Services after the effective date of termination.

### **13. MISCELLANEOUS**

**13.1. Affiliates & Agents.** Plan Sponsor acknowledges and agrees that Adviser may utilize the services of affiliates, agents, vendors and suppliers selected by Adviser. Adviser's use of any such party will not relieve Adviser of its obligations hereunder, and Adviser shall at all times remain liable for the performance of the Services hereunder. Plan Sponsor acknowledges that Adviser has delegated certain of its obligations to Subadviser and that Adviser reserves the right, in its sole discretion, to replace Subadviser upon reasonable prior notice to Plan Sponsor. In the event, the Subadviser terminates its agreement with the Adviser and provides advance notice to the Adviser, Adviser will notify the Plan Sponsor of such change as soon as reasonably practicable. If the Subadviser replacement is deemed unsatisfactory by the Plan Sponsor, the Plan Sponsor may terminate this Agreement at any time in accordance with Section 12 herein. Adviser represents that Subadviser is not affiliated with Adviser or Empower and that Adviser has entered into an agreement with Subadviser that includes representations that the Subadviser: (i) is registered with the Securities and Exchange Commission as an investment adviser under the Advisers Act, and (ii) will maintain the required federal or state investment advisory registrations that permit it to perform its obligations under its agreement with Adviser, and (iii) will act, at all times in providing the methodology and software for Adviser's Services, in conformity with the requirements imposed upon Subadviser as an Subadviser under Department of Labor Advisory Opinion 2001-09A (and any modifications or amendments thereto), to the extent applicable to the Services.

**13.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Neither party nor its personnel shall be considered employees of the other party for any purpose. None of the provisions of this Agreement shall be construed to create an agency, partnership or joint venture relationship between the parties or the partners, officers, or employees of the other party by virtue of either this Agreement or actions taken pursuant of this Agreement.

**13.3. No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their affiliates and is not intended to confer any rights or remedies upon any other person.

**13.4. Assignment.** This Agreement shall be binding upon and inure to the benefit of each of the parties, their affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent, which will not be unreasonably withheld or delayed, and as consistent with the Advisers Act.

**13.5. Entire Agreement.** This Agreement, including all Exhibits, Schedules, notices and attachments (including an incorporation by reference of the terms and conditions of this Agreement), constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services. Except as otherwise provided herein, this Agreement or any Schedule may be amended by written agreement of the parties; for that purpose, emails do not constitute signed writings. Notwithstanding the foregoing, Adviser may add or enhance the Services, update the method of providing the Services without any reduction in service, or modify the Services to comply with applicable laws by providing written notice to Plan Sponsor at least 30 days in advance of the effective date of such change, provided that Plan Sponsor may opt out of certain Services that directly impact Participants and any changes that result in an increase in fees to the Plan. Any Adviser policies that are attached to or referenced in this Agreement may be modified by Adviser at any time. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provision hereof and no waiver shall be effective unless made in writing.

**13.6. Governing Law; Waiver of Jury Trial.** To the extent not preempted by federal law, this Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Colorado, without regard to conflict of law principles, and any claim arising under or related to this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located in Colorado. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim arising out of, connected with, related to or incidental to this Agreement to the fullest extent permitted by law.

**13.7. Force Majeure.** Neither Adviser nor Plan Sponsor shall be liable to the other for any and all losses, damages, costs, charges, attorney fees, payments, expenses or liability due to delay or interruption in performing its obligations hereunder, and without the fault or negligence of such party, due to causes or conditions beyond its control, including, without limitation, labor disputes, riots, war and war-like operations including acts of terrorism, epidemics, explosions, sabotage, civil disturbance, governmental restriction, transportation problems, failure of power or other utilities including phones, internet disruptions, fire or other casualty, natural disasters, epidemics, pandemics, acts of God, disruptions in orderly trading on any relevant exchange or market, or any other cause that is beyond the reasonable control of either party.

**13.8. Severability.** The provisions of this Agreement are severable, and if for any reason a clause, sentence, paragraph or provision of this Agreement is determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity will not affect other provisions of this Agreement that can be given effect without the invalid provision.

**13.9. Notices.** All formal notices required by this Agreement will be in writing and may be provided by email, facsimile, electronic copies, hand delivered, sent by overnight delivery, or by first class mail, postage prepaid, any of which shall have the same force and effect as execution and delivery of an original. All notices sent shall be effective upon receipt.



**13.10. Headings; Defined Terms; Counterparts.** Section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement. Unless the context requires otherwise, capitalized terms defined in this Agreement have the meanings set forth herein for all purposes of this Agreement including any Schedules or Exhibits. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties' execution and delivery of this Agreement by facsimile, email, or electronic copies shall have the same force and effect as execution and delivery of an original.

**13.11. Survival.** The provisions of the following sections shall survive the termination of this Agreement: Fees & Charges; Confidential Information; Privacy & Data Security; Liability & Indemnification; Dispute Resolution; Governing Law; Waiver of Jury Trial; Survival; Severability; No Third-Party Beneficiaries; and any other section that would by its context be reasonably expected to survive termination.

**13.12. Signatures/Corporate Authenticity.** By signing this Agreement the parties certify that they have read and understood it, that they agree to be bound by its terms, and that they have the authority to sign it. This Agreement is not binding on either party until signed by both parties.

**13.13. Electronic Signatures.** Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures reasonably believed to be genuine on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

**SCHEDULE A**

**List of Plans**

**City of Allegan 457 Plan 100385-01**



## SCHEDULE B

### DISCRETIONARY INVESTMENT ADVISORY AND NON-DISCRETIONARY SERVICES SCHEDULE

The parties agree that the Services under this Schedule will commence upon a date as directed by the Plan Sponsor and mutually agreed to by the parties, as administratively and operationally feasible.

#### 1. GENERAL DESCRIPTION OF SERVICES

**1.1** Adviser provides a full suite of discretionary and non-discretionary investment advisory services to eligible Participants as selected by the Plan Sponsor. Such services may include set-up services, communications, reporting, investment recommendations, and initiation of investment transactions, subject to the terms and conditions of the Agreement and this Schedule, as the same may be amended in writing by the parties from time to time.

**1.2** As part of its Services, Adviser provides Participants access by telephone to the telephone call center (investment adviser representatives available from 7:00 a.m. to 8:00 p.m. Central Time, business days), and Adviser shall provide Participants, and designated representatives of Plan Sponsor, web access to Plan and Participant account information, subject to periodic maintenance and system availability.

#### 2. SERVICE ELECTIONS

##### 2.1 Managed Account Service:

**2.1.1** As further described in Adviser's Form ADV Brochure, the Managed Account Service provides discretionary advisory services, consisting of personalized portfolios created by Subadviser based upon the investment options available in the Plan, to Managed Account Participants. The Managed Account service allocates enrolled Participant accounts to personalized portfolios, and automatically rebalances portfolio allocations if Adviser believes rebalancing to be appropriate.

**2.1.2** Unless otherwise agreed to by the parties, Adviser will construct portfolios using the Plan's core investment options ("**Core Investment Options**"), which are those investment options selected for use in the Plan by Plan Sponsor that provide investment choice under the following asset categories: Fixed Income/Cash, Bond, Large Cap, Small/Mid Cap, and International.

**2.1.3** Core Investment Options do not include any employer stock alternatives or self-directed brokerage option alternatives. Unless the Plan Sponsor restricts Adviser from selling employer stock held in an account managed by Adviser, Adviser will liquidate employer stock held in an account that Adviser manages. The Plan must select and at all times maintain Core Investment Options that cover the broad asset categories in order to utilize the Managed Account Service and the Online Advice Service. Managed Account Participants may further customize their portfolio by providing additional information to Adviser by phone or online and such information shall be considered by Subadviser to determine portfolio recommendations for the Managed Account Participant. Adviser shall periodically review and rebalance the Managed Account Participant's portfolio.

**2.1.4** A Managed Account Participant may cancel his or her participation in the Managed Account Service by calling Adviser's representative or through the website. Upon a Managed Account

Participant terminating participation in the Managed Account Service, the Managed Account Participant is solely responsible for the investment of his or her Plan account.

**2.1.5** While this Agreement assumes that enrollments of Participants will be performed primarily on an “opt-in” basis such that Participants must voluntarily enroll in the Services described herein, the Plan Sponsor may also desire that Adviser’s services be implemented for a designated group of Participants on an “opt-out” basis, pursuant to Plan Sponsor’s instruction to Adviser. These opt-out events may occur at the time when the Plan begins receiving recordkeeping services from Adviser’s affiliated recordkeeping provider, or on some other occasional or periodic basis. This section of the Agreement will refer to the group of Participants designated for opt-out enrollment as **“Enrolling Participants.”**

**2.1.6** Adviser or its affiliated recordkeeper will notify Enrolling Participants of their automatic enrollment into the Managed Account Service at least two times. At least one enrollment notification will take place in advance of the automatic enrollment to give Enrolling Participants adequate opportunity to assess whether to opt-out of the enrollment process. Each Enrolling Participant actually enrolled in the Managed Account Service will be sent materials confirming Managed Account Service enrollment by Adviser shortly after enrollment processing.

**2.1.7** Enrolling Participants may elect not to participate in the Managed Account Service through the methods described in enrollment notifications provided to Participants, such as by calling Adviser to opt-out, or by declining enrollment through Adviser’s internet interface. Additionally, if a Participant has made a financial or investment election on their account after enrollment notification, but prior to the automatic enrollment process into the Managed Account Service, the Participant will not be enrolled.

**2.1.8** In the event that Enrolling Participants are automatically enrolled when the applicable Plan converts onto the recordkeeping platform provided by Adviser’s affiliated recordkeeper, Enrolling Participants’ accounts will become actively managed by the Managed Account Service shortly after assets are transferred from the prior recordkeeper. For the short period between asset transfer from the prior recordkeeper until Adviser can assume active management of the account, Enrolling Participants’ accounts will be invested in similar investments as were held at the prior recordkeeper, pursuant to mapping instructions received by the Plan Sponsor. Once conversion to the recordkeeping platform is complete, Enrolling Participants may cancel their enrollment in the Managed Account Service at any time by completing the cancellation form available online or by calling Adviser at the Plan’s existing toll-free customer service number.

**2.1.9** In the event the Plan Sponsor directs Adviser to enroll Participants on an opt-out basis after the initial transition of the Plan to the Empower recordkeeping platform, Adviser may offer a free period for the Managed Account Service, under which no Managed Account Service fees will be assessed to Enrolling Participants within 60 days following enrollment date.

**2.1.10** Data requirements for Enrolling Participants:

**2.1.10.1** Subject to the information below, if Adviser does not have required indicative data for an Enrolling Participant, the Enrolling Participant will not be enrolled into the Managed Account Service.

**2.1.10.2** Plan Sponsor may provide Adviser with default data for use in processing enrollments for Enrolling Participants, and in advising Participant accounts. If Plan Sponsor provides direction to use default data, such as income assumptions, Plan Sponsor agrees that use of such default data is consistent with Adviser’s execution of its fiduciary responsibility in providing investment advice to Participants.

**2.1.10.3** Gender Assumption. If gender information is missing on any Participant, Plan Sponsor instructs Adviser to default gender assumption to female, unless Plan Sponsor otherwise instructs Adviser, for purposes of processing Managed Account Service enrollment.

**2.1.10.4** Date of Birth. If a Participant's date of birth is beyond the mortality tables used by the independent financial expert, or the Participant's date of birth provided to Adviser is invalid, the Participant will not be eligible to be enrolled into the service

**2.2 Online Advice Service.** Adviser shall provide access to the Online Advice Service to Participants. For the Online Advice Service, Adviser shall provide non-discretionary advisory services, consisting of investment recommendations created by Subadviser based upon the investment options available in the Plan, to Online Advice Participants. Online Advice Participants shall be responsible for implementing the investment recommendations. Beyond the initial recommendation, Adviser is not responsible for providing additional investment recommendations or the management of an Online Advice Participant's account. The Online Advice Service is only available through websites supported by Empower and Subadviser. Managed Account Participants are not eligible for the Online Advice Service while participating in the Managed Account Service.

### **3. COMMUNICATION AND ONGOING MAINTENANCE**

**3.1 Enrollment.** Plan Sponsor agrees that Adviser will conduct, (at no additional charge to Plan Sponsor), an education/enrollment campaign as part of the rollout of the Services to all eligible Participants and an annual campaign thereafter. The campaign materials will be provided to each Participant and may include, but are not limited to a descriptive brochure, descriptive letter from Plan Sponsor, enrollment form, follow-up communication and other appropriate materials. Participants can enroll in the Managed Account Service through an online website (accessed through the Plan's participant website or enrollment site), Adviser's investment adviser representatives or by returning an enrollment form.

#### **3.2 Ongoing Communications**

**3.2.1** Communication and ongoing maintenance includes monitoring the use of Services, and integrating Services communications into the Plan's overall communications campaign, including enrollment materials, forms, web site, and group meetings.

**3.2.2** As part of a Participant's enrollment in the Managed Account service, the Participant will receive the Managed Account service welcome kit shortly after enrollment. The Participant will receive an Annual Kit shortly after their birthday. Each kit provides the participant an update on their account and reaching their retirement goals. Standard materials may include a discussion of Services in enrollment/education materials, print/email communications specific to the Services, on the web site, and/or in personalized Participant materials. Additional or custom Participant communications materials may be used by Adviser and may be paid for by Adviser, Empower or the Plan Sponsor. Such additional or custom communications may include targeted marketing techniques based upon participant demographical and/or account data (including but not limited to age, income, deferral rates, current investment elections) to identify Participants who may benefit from participation in the Managed Account service.

### **4. ADVISORY AND PORTFOLIO MANAGEMENT SERVICES FEES**

Managed Accounts per Participant Annual Fee

Account Balance	Managed Account Annual Fee
First \$100,000 of account balance	0.65 %
Next \$150,000, up to \$250,000 account balance	0.55 %
Next \$150,000, up to \$400,000 account balance	0.45 %
Amounts greater than \$400,000	0.35 %

For example, if a Participant's account balance subject to the Managed Account service is \$50,000, the fee is **0.65%** of the account balance. If the account balance subject to the Managed Account service is \$500,000, the first \$100,000 will be subject to a fee of **0.65%**, the next \$150,000 will be subject to a fee of **0.55%**, the next \$150,000 will be subject to a fee of **0.45%**, and amounts over \$400,000 will be subject to a fee of **0.35%**.

## 5. ADDITION OF NEW PLANS

Tax-deferred plans not listed at the top of this Schedule B that are added to Plan Sponsor's program after the Effective Date will not be included in this Agreement, and will be subject to additional fees.

## 6. LIMITATIONS AND INVESTMENT OPTION CHANGES

Services will have limited capabilities for purposes of enrollment, rebalancing or reforecasting for up to ten (10) business days following changes to the investment option lineup. Other functionality will be available during this time. Adviser and Subadviser need to conduct a new analysis of the available investment option array to accommodate these changes. This analysis will take approximately 10 business days, during which time, Online Investment Advice, and the Managed Account service will not be available for Participant use. Once the analysis is complete, Online Investment Advice and the Managed Account service will once again be available.



# Plan sponsor authorization government 457(b) deferred compensation plan in-service age 59 1/2 withdrawals

Effective on \_\_\_\_\_(date), the Plan Sponsor elects to change the inservice distribution age from age 70 1/2 to age 59 1/2 in accordance with the administrative procedures and conditions described below and the terms of the recordkeeping services agreement.

**Note - unless otherwise directed, the contribution types/money source(s) currently allowed for in-service age 70 1/2 withdrawals will be available for in-service age 59 1/2 withdrawals.**

**Plan Document Amendment** – Please elect the appropriate plan document service for the plan:

- \_\_\_\_\_ Plan uses Empower's Document services. Empower will provide the applicable plan document amendment which must be signed and returned to Empower prior to the implementation of the new rule.
- \_\_\_\_\_ Plan uses a custom plan document. It is the plan sponsor's sole responsibility to amend the plan by the end of the plan year in which this provision is implemented. The new in-service age 59 1/2 rule will be added to the Empower recordkeeping system within 5 business days upon receipt of this election form.

By signing below and returning this form to Empower, the Plan Sponsor has elected to adopt this inservice distribution change by the effective date on this election form.

City of Allegan 457 Plan \_\_\_\_\_  
100385-01

Plan name

Plan number

Authorized plan administrator representative signature

Date

Printed name



# Plan sponsor election related to CARES act coronavirus-related distributions and loans

**Plan Name: City of Allegan 457 Plan**

**Plan #: 100385-01**

The Plan Sponsor previously administered the Plan to provide for the following provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act:

Coronavirus-related distributions and repayments were available up to December 30, 2020. If Empower is providing plan document services for your plan, please indicate if you previously allowed Coronavirus-related distributions:

☐ The Plan Sponsor previously authorized Coronavirus-related distributions effective on \_\_\_\_\_ and terminated on \_\_\_\_\_.  
[all money sources available for the distribution/default]

☐ Coronavirus-related distributions were only made available from the following money sources. [If money purchase is an active source in the Plan, select this option.]

\_\_\_\_\_  
\_\_\_\_\_

Coronavirus-related loan repayment suspensions were available up until December 31, 2020. If Empower is providing plan document services for your plan, please indicate if you previously authorized Coronavirus-related loan repayment suspensions:

☐ The Plan Sponsor previously authorized Coronavirus-related loan repayment suspensions effective on \_\_\_\_\_ and terminated on \_\_\_\_\_.

Coronavirus-related new loans were available up to September 22, 2020. If Empower is providing plan document services for your plan, please indicate if you previously authorized a Coronavirus-related loan:

☐ The Plan Sponsor previously authorized Coronavirus-related new loans effective on \_\_\_\_\_ and terminated on \_\_\_\_\_.

[Do not mark this box if any previous elections were made (above).]

☐ The Plan Sponsor did not administer the Plan to provide for any provisions of the CARES Act. [Do not mark this box if any previous elections were made (above).]

\_\_\_\_\_  
Authorized plan administrator representative signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name

# Plan administrative procedures for coronavirus-related new plan loans, coronavirus-related loan repayment suspensions and coronavirus-related distributions, and other certain administrative changes

## Coronavirus-related distributions

Coronavirus-related distributions were issued by the plan to Qualified Individuals (as defined below) in an amount not to exceed \$100,000, less prior coronavirus-related distribution amounts from all plans maintained by the employer (and any member of any controlled group which includes the employer) prior to December 30, 2020. The plan Sponsor accepted on behalf of the Plan the participant's self-certification that: (i) the participant was a Qualified Individual eligible for the requested coronavirus-related distribution; and (ii) the amount requested by the participant satisfied the requirements for a coronavirus-related distribution including that the participant's receipt of such distribution does not exceed the \$100,000 limit when added to all other coronavirus-related distributions the participant had received across all IRAs and plans maintained by the Plan Sponsor and, as applicable, any Plans maintained by any member of the Plan Sponsor's controlled group.

These distributions were processed prorata across all available vested money sources and investment options held in the participant's account, unless you elected to restrict distributions to the specified money sources in the attached plan election form.

Participants are responsible for determining the appropriate reporting of the coronavirus-related distribution on their income tax return.

With respect to any Qualified Individual who receives a coronavirus-related withdrawal from the Plan (or any other eligible retirement plan or IRA), the Plan Sponsor directs Empower to process any repayment(s) that the Qualified Individual self-certifies is a bona fide repayment of a previous coronavirus-related withdrawal received within the three-year period beginning on the day after the date on which such withdrawal was received by the Qualified Individual, provided the Qualified Individual is eligible under the terms of the Plan to make a rollover contribution into the Plan. Qualified Individuals are responsible for determining the appropriate reporting of any such repayment(s) on their personal income tax return(s).

Coronavirus-related withdrawal received within the three-year period beginning on the day after the date on which such withdrawal was received by the Qualified Individual, provided the Qualified Individual is eligible under the terms of the Plan to make a rollover contribution into the Plan. Individuals are responsible for determining the appropriate reporting of any such repayment(s) on their personal income tax return(s).

## Coronavirus-related Loans

### New loans-amount available

The Plan issued coronavirus-related loans to a Qualified Individual (as defined below) between March 27, 2020 and September 22, 2020 (180 day period beginning on the date of enactment of the CARES Act) at an increased maximum amount that did not exceed the lesser of: (1) \$100,000 minus the difference between the highest outstanding loan balance during the last 12-consecutive-month period and the outstanding loan balance on the date the loan is made; or (2) 100% of the participant's vested account balance.

### New loans and/or loan repayment suspensions-loan suspension period and repayment of coronavirus-related loans

If a participant that self-certified as a Qualified Individual had an outstanding loan from the Plan on or after March 27, 2020 and the date of any repayment of such loan occurs during the period between March 27, 2020 and December 31, 2020, the participant may have elected to suspend the repayment due date. Following the end of the suspension period, the loan will be re-amortized to adjust the remaining payments (plus interest accrued during the suspension period) over the remaining period of the loan, plus the suspension period.

### Qualified Individuals who requested coronavirus-related loans or distributions

To qualify for a coronavirus-related loan or withdrawal, the participant self-certified that he/she met at least one of the following requirements:

- (i) The participant had been diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug and Cosmetic Act);
- (ii) The participant's spouse or dependent was diagnosed with such virus or disease by such a test; or
- (iii) The participant, their spouse or a member of their household (a person who shares the participants principal residence) experienced adverse financial consequences as a result of:
  - being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease;
  - being unable to work due to lack of childcare due to such virus or disease;
  - closing or reducing hours of business owned or operated by the individual due to such virus or disease;
  - effective June 19, 2020, a reduction in pay or self-employment income due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19,
  - effective June 19, 2020, the participant's spouse or a member of the participant's household being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19,
  - effective June 19, 2020, closing or reducing hours of a business owned or operated by the individual's spouse or a member of the participant's household due to COVID-19; or
  - other factors as determined by the Secretary of the Treasury.

### Other administrative changes

#### Waiver of loan default

As prescribed by IRS Notice 2020-23, no Plan loans were defaulted between April 1, 2020 through July 14, 2020, whether or not the borrower is a Qualified Individual. Interest will continue to accrue during this temporary "no-default" window. However, beginning July 15, 2020, any delinquent Plan loans are subject to default based on the terms of the applicable loan agreement (unless such default would occur during the suspension period previously requested by a Qualified Individual, as described above).



**Waiver of required minimum distributions**

Pursuant to Section 2203 of the CARES Act, required minimum distributions from the Plan that otherwise would have to be made for 2020 were waived for all participants and beneficiaries, subject to any procedures approved by the Plan Sponsor that are permitted or required by regulations or other interpretative guidance (e.g., opt-out election, tax withholding elections). This includes distributions from the Plan that would have been required by April 1, 2020, due to the Plan account owner having turned age 70½ in 2019.

The foregoing procedures shall be subject to requirements of applicable law, regulations, or other interpretative guidance now or subsequently in effect and, accordingly, shall be interpreted and deemed to be modified in such manner as necessary and appropriate to conform to and comply with any such requirements.

## BIRTH AND ADOPTION PLAN ELECTION FORM

# Direction to process birth and adoption distributions and repayments for 401(a), 401(k), 403(b) and governmental 457(b) plans

**Plan name:** City of Allegan 457 Plan

**Plan number:** 100385-01

### Section 1:

This form is for SECURE Act birth and adoption distributions and repayments. Please choose one of the following three options below and follow the instructions in each option.

- ☐ The Plan is not adopting the birth and adoption distribution provision. If this option is selected, no further action is required.
- ☐ Pursuant to the SECURE Act, the Plan has already adopted an amendment to its plan document to add the birth and adoption distribution provision. Please refer the plan document and complete the applicable questions below.
- ☐ Pursuant to the SECURE Act, the Plan is adding the birth and adoption distribution provision at this time or the Plan has already added birth and adoption distributions, but has not yet amended the plan document. Please complete the applicable questions below.

---

### Section 2:

Pursuant to the SECURE Act, the plan sponsor intends to administer the following SECURE Act provision(s) as of the effective date(s) elected below:

#### A:

- ☐ **The plan provides birth and adoption distributions for participants who are still employed. Effective date:** \_\_\_\_\_.
- ☐ The plan allows birth and adoption distributions from ALL money sources.

**OR**

- ☐ The plan allows birth and adoption distributions from the following money sources:

---

---

---

**B:**

- ☐ The plan has the following birth and adoption distribution restrictions for in-service distributions. If nothing is indicated below, no restrictions will be applied.

- ☐ The plan requires 100% vesting on the following money source(s):

---

---

---

- ☐ The plan has a birth and adoption distribution age restriction on the following money source(s). (MPP money sources require an age restriction of at least age 59½.):

---

---

---

- ☐ The plan has a minimum amount for birth and adoption distributions of \$\_\_\_\_\_.

- ☐ The plan has a frequency restriction for birth and adoption distributions of \_\_\_\_\_ per \_\_\_\_\_ period.

**C:**

- ☐ **For participants who have separated from service,** the Plan provides birth and adoption distributions without restrictions and from all vested money sources. If the participant is eligible for rollover, the plan will allow the birth and adoption repayments.

**Effective date:** \_\_\_\_\_

**D:**

- ☐ Please indicate if the plan will review and approve all birth and adoption distributions in accordance with the plan's administrative procedures.

### **Birth and adoption distributions and repayments**

The plan may issue one or more birth and adoption distributions to a participant in an amount not to exceed \$5,000 per child. Unless the plan sponsor elects to review and approve these distributions by checking the box above, the plan sponsor directs the service provider to accept on behalf of the plan, and conclusively rely on, the participant's self-certification that:

1. The amount requested by such individual satisfies the requirements for a birth and adoption distribution that occurred within the previous 12 months of the birth or adoption of the child.
2. The individual's receipt of such distribution does not exceed the aggregate \$5,000-per-child limit across all IRAs and other eligible retirement plans, including tax-qualified retirement plans maintained by the plan sponsor and any member of the plan sponsor's controlled group.

Unless alternate elections have been provided above, these distributions will be processed pro rata across all vested contribution sources and investment options held in the participant's plan account (excluding any and all funds held in the participant's self-directed brokerage account) subject to applicable plan terms.

A birth and adoption distribution is not treated as an eligible rollover distribution for purposes of Internal Revenue Code sections 401(a)(31), 402(f) and 3405. The plan sponsor directs the service provider to, in accordance with applicable withholding requirements, withhold 10% federal income tax (plus any applicable state and/or local income tax) on the amount allocable to the taxable portion of the distribution unless the participant properly elects a greater withholding amount or elects no withholding with respect to such amount.

The service provider will report the entire amount of the birth and adoption distribution on the participant's IRS Form 1099-R in the year funds are withdrawn from the plan and will properly designate the amount that is and is not allocable to the taxable portion of the distribution. Participants are responsible for determining the appropriate reporting of the qualified birth or adoption distribution on their personal income tax return(s).

With respect to any participant who receives a birth and adoption distribution from the plan (or any other eligible retirement plan or IRA), the plan sponsor directs the service provider to process any repayment(s) that the participant self-certifies is a bona fide repayment of a previous qualified birth or adoption distribution provided the participant is eligible under the terms of the plan to make a rollover contribution. Participants are responsible for determining the appropriate reporting of any such repayment(s) on their personal income tax return(s).

Any distribution fees assessed for in-service or separation distributions under the Plan will also be assessed to the in-service and/or separation from service birth and adoption distributions.

### **Authorized plan representative signature**

The plan sponsor directs service provider to process birth and adoption distributions and repayments subject to the terms of the procedures provided on this form and the recordkeeping services agreement between the plan sponsor and the service provider. The plan sponsor agrees to administer the plan consistent with the birth and adoption distribution procedures it has authorized on this form.

The plan sponsor further acknowledges that it will amend the plan to provide for the birth and adoption distributions and repayments it has authorized on this form. Unless the IRS issues clarifying guidance, the plan fiduciary(ies) should discuss with their legal and tax advisors whether and to what extent birth and adoption distributions are a protected benefit once adopted.

---

**Authorized plan representative signature**

**Date**

---

**Printed name**

**Securities offered and/or distributed by GWFS Equities, Inc., Member FINRA/SIPC.** GWFS is an affiliate of Empower Retirement, LLC; Great-West Funds, Inc.; and registered investment advisers, Advised Assets Group, LLC and Personal Capital. This material is for informational purposes only and is not intended to provide investment, legal or tax recommendations or advice.

©2021 Empower Retirement, LLC. All rights reserved.

## **CUSTODIAL ACCOUNT AGREEMENT**

Establishing

The

CUSTODIAL ACCOUNT

By and Between

City of Allegan, MI

And

Empower Trust Company, LLC

08/02/2022

## TABLE OF CONTENTS

		<u>PAGE</u>
Section 1	Establishment of Custodial Account	2
Section 2	General Duties of the Employer and Plan Administrator; Indemnification	2
Section 3	General Duties of Custodian	3
Section 4	Power and Duties of Custodian with Respect to Custodial Account	4
Section 5	Additional Services	5
Section 6	Payment of Taxes	6
Section 7	Disbursement of Custodial Account Assets	6
Section 8	Expenses and Compensation of Custodian	6
Section 9	Expenses of the Plan and Custodial Account	7
Section 10	Reports of the Custodian	7
Section 11	Resignation, Removal and Substitution of Custodian	7
Section 12	Amendment and Termination of Custodial Account	8
Section 13	Miscellaneous Provisions	8
	Appendices	11

**THIS CUSTODIAL ACCOUNT AGREEMENT** is made between City of Allegan, MI, in its capacity as the sponsoring employer of the Plan described below (hereinafter called the “Employer”), and Empower Trust Company, LLC, a trust company chartered under the laws of the State of Colorado having a place of business in Greenwood Village , Colorado (hereinafter called the “Custodian”).

**WITNESSETH:**

**WHEREAS**, the Employer has established or adopted for its eligible employees the City of Allegan 457 Plan (hereinafter called the “Plan”);

**WHEREAS**, the box checked immediately below describes the type of Plan so established or adopted by the Employer;

☒ Code section 457(b) governmental

**WHEREAS**, the Employer is authorized under the terms of the Plan to appoint a Custodian; and

**WHEREAS**, the Employer, if applicable, has appointed \_\_\_\_\_ as Plan Administrator, as defined by ERISA. If not so appointed, the Employer shall be the Plan Administrator. If applicable, the Plan Administrator is authorized under the Plan to appoint a custodian to hold plan funds; and

**WHEREAS**, the Employer or Plan Administrator, as applicable, desires the Custodian to hold Plan funds and the Custodian is willing to hold such funds pursuant to the terms of this Custodial Account Agreement; and

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby mutually declare and agree as follows:

Section 1: Establishment of Custodial Account.

(a) In order to carry out the purposes of the Plan, a Custodial Account (hereinafter called the “Custodial Account”) is hereby created and established. The Custodian accepts this Custodial Account and agrees to act as Custodian hereunder, but only on the terms and conditions set forth in this Custodial Account Agreement. This Custodial Account shall be effective on the date this Custodial Account Agreement is executed by the Custodian.

(b) The Custodial Account shall include only those assets that the Custodian initially accepts and assets that are subsequently added pursuant to the provisions of Sections 3 and 4 of this Custodial Account Agreement. Only assets actually received by the Custodian will become part of the Custodial Account. The Employer, or Plan Administrator, as applicable, acknowledges and agrees that it is responsible for effectuating the transfer of any assets held by a prior Custodian or custodian to the Custodian. All assets so received, together with the income therefrom and any other increment thereon, shall be held by the Custodian pursuant to the terms



of this Custodial Account Agreement without distinction between principal and income and without liability for the payment of interest thereon.

Section 2: General Duties of the Employer; Indemnification.

(a) The Employer shall control and manage the operation of the Plan. The Employer shall be responsible for determining benefit rights under the Plan, instructing the Custodian in the disbursement of benefits, investment management, soliciting stock voting instructions from Plan participants, directing the Custodian in voting proxies, and performing those plan administration functions specified in the Plan.

(b) The Custodian shall be fully protected and shall incur no liability in acting in reliance upon the instructions or directions of the Plan Administrator, the Employer or its designees, including any investment manager(s) that the Employer identifies to the Custodian as persons authorized to direct the investment of the Plan's assets (each, an "Investment Manager") and Plan participants in the case of a participant-directed individual account plan. For purposes of this Custodial Account Agreement, any reference herein to directions or instructions from the Employer shall include directions or instructions from any such designees.

(c) The Employer shall indemnify and save harmless the Custodian, its affiliates, and their officers, agents and employees (each, an "Indemnified Person") for and from any Liability, as defined below, that may be imposed on, incurred by, or asserted against any Indemnified Person in connection with or arising out of (i) any matter as to which the Custodian has complied with directions or instructions as contemplated by this Custodial Account Agreement or has refrained from acting in the absence of directions or instructions as contemplated by this Custodial Account Agreement, (ii) any matter to which the Custodian has acted in accordance with its applicable standard of care under this Custodial Account Agreement, or (iii) any breach of any statutory or other duty owed to the Plan by the Employer, the Plan Administrator, any Investment Manager or any delegate of any of them. In addition to and in no way in limitation of the foregoing indemnification, the Employer hereby agrees to indemnify and hold harmless the Custodian from and against any Liability to which the Custodian may be subject by reason of any act or omission of any prior, subsequent or existing custodian of the Plan. "Liability" means any liability, loss, cost, damage, penalty, fine, obligation or expense of any kind whatsoever (including, without limitation, reasonable attorneys', accountants', consultants' or experts' fees and disbursements).

(d) The Custodian, its affiliates, and their officers, agents and employees may bring action against the Employer to contribute to the satisfaction of any Liability to the extent that the Liability (i) is not subject to indemnification under subsection (c) and (ii) is caused by the culpable conduct of the Employer, the Plan Administrator, an Investment Manager, or their respective agents.

(e) The Custodian shall have no obligation to undertake, defend or continue to maintain any action or proceeding arising in connection with the Plan, unless and until the Employer requests the Custodian to do so and agrees in writing to indemnify the Custodian against the Custodian's costs, expenses and liabilities (including, without limitation, attorneys' fees and expenses) relating thereto, to be primarily liable for such payment and to make periodic payments in respect of such fees and expenses during the course of such proceedings. If the Employer thereafter does not pay such costs, expenses and liabilities in a reasonably timely

manner, the Custodian shall discontinue participation in such action or proceeding and charge the assets of the Custodial Account to the extent sufficient for any unpaid fees and expenses.

(f) Under no circumstances will the Custodian be liable for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought. No action, regardless of form, arising out of or pertaining to the Custodian's services hereunder may be brought more than six years after the cause of action has accrued. Subject to the exclusion of liability for indirect, incidental, consequential or special damages, the Custodian will be liable for direct damages suffered by the Plan, the Employer and the Plan Administrator to the extent such direct damages result from the Custodian's fraud, gross negligence, or willful misconduct in performing its duties as set out in this Custodial Account Agreement.

(g) The foregoing rights of indemnification and contribution shall not limit any rights or remedies that may be available to the Custodian under law.

(h) If the Employer is a governmental entity, the foregoing rights of indemnification and contribution are subject to any indebtedness limitations applicable under the entity's governing laws.

### Section 3: General Duties of Custodian.

(a) The Custodian shall receive, hold, invest and reinvest the assets of the Custodial Account pursuant to the provisions of this Section and Section 4 in accordance with the directions received by it from Employer or Plan Administrator, as applicable, or its designees and shall have no duty to determine any facts or the propriety of any action taken or omitted by the Custodian in good faith pursuant to instructions from the Plan Administrator, Employer, or its designees.

(b) The Custodian shall be responsible only for such assets as are actually received by it as Custodian hereunder. The Custodian shall have no duty or authority to ascertain whether any contributions should be made to it pursuant to the Plan or to bring any action to enforce any obligation to make any contribution, nor shall it have any responsibility concerning the amount of any contribution or the application of the Plan's contribution formula.

(c) The duties and obligations of the Custodian hereunder shall be limited to those expressly imposed upon it by this Custodial Account Agreement, notwithstanding any reference contrary in the Plan, and no further duties or obligations of the Custodian shall be implied. For example, the Custodian shall have no duty to determine the prudence of any Plan investment directed to be made by the Plan Administrator or its designees, to diversify Plan investments, or to make any investment decisions. The Custodian shall not be liable for any loss to, or diminution of the Plan assets, or for any other loss or damage that may result from the discharging of its duties hereunder if it acts in good faith and in accordance with the terms of this Custodial Account Agreement and in accordance with the applicable federal or state laws, rules, and regulations.

(d) Custodian and its agents shall perform their responsibilities in a manner consistent with that of a professional custodian acting in the jurisdiction in which the assets are located.

#### Section 4: Power and Duties of Custodian with Respect to Custodial Account Assets.

The Custodian shall have the following powers and duties regarding the Custodial Account:

(a) To hold title to the assets of the Custodial Account, which may include entering into depository arrangements for the safekeeping of assets and records relevant to the ownership of such assets with any bank or banks and/or depositories as the Custodian may choose and the right to hold such assets in nominee name and in any other book entry or any other data processing form.

(b) To invest the assets of the Custodial Account in investment options selected by the Employer for which an affiliate of Custodian (hereinafter called "Recordkeeper") provides recordkeeping services pursuant to an election made by the Employer with Recordkeeper including, but not limited to, funds invested through a self-directed option. Additionally, the Custodian may invest in "qualifying employer securities", as that term is defined under ERISA Section 407, if applicable, only in accordance with the directions received from the Employer. The Custodian shall have no duty or responsibility to determine the appropriateness of any Plan investment (including but not limited to whether "qualifying employer securities" meet the applicable percentage limitations under ERISA Section 407) or to cause such investments to be changed.

(c) To make transfers among investment vehicles or disbursements from the Custodial Account as directed by the Employer, its designees, or Participants as allowed by the terms of the Plan. The Custodian shall be indemnified by the Employer and entitled to rely on such direction and shall have no responsibility to ascertain whether the Plan permits such a transfer or disbursement.

(d) To delegate to Recordkeeper, affiliates or others, any or all of its duties arising out of this Agreement, including but not limited to, recordkeeping and reporting. Also, the Custodian may utilize the services of outside custodians to hold on the Custodian's behalf any of the Plan's assets invested in securities, which assets may be held in the custodian's nominee name.

(e) To vote securities proxies as directed by the Employer or its designees.

#### Section 5: Additional Services.

(a) If applicable, the Custodian shall provide the additional reporting and administrative services as set forth in the applicable Appendix to this Custodial Account Agreement (the "Additional Services"). The provision of any Additional Services shall be subject to the terms and conditions of this Custodial Account Agreement, except as otherwise specified in the applicable Appendix. Capitalized terms in the applicable Appendix that are not defined in such Appendix but are defined in this Custodial Account Agreement shall bear the definition set forth in this Custodial Account Agreement. If there is any conflict or inconsistency between the terms of an applicable Appendix and this Custodial Account Agreement, the terms of the applicable Appendix shall prevail.

(b) The Employer acknowledges and agrees that: (i) the Additional Services are provided exclusively for the purpose of assisting the Employer in monitoring and administering the Plan's investments; (ii) the Custodian is not undertaking any discretionary responsibility for the management or administration of the investments by performing the Additional Services; (iii) the provision of the Additional Services is not intended to be a primary basis for any investment decision; and (iv) the Custodian is not acting in a fiduciary capacity with respect to the Additional Services. Accordingly, the Custodian shall not be liable for any investment losses arising from any reliance on the Additional Services or any information provided in connection with them.

(c) Notwithstanding any other provision of this Custodial Account Agreement, to the maximum extent permitted by applicable law, the Custodian's aggregate liability with respect to the Additional Services (whether arising in contract, tort or otherwise) will in no event exceed the annual cap set forth in the applicable Appendix.

(d) Either party may terminate the applicable Appendix for the provision of any or all of the Additional Services upon 90 days' written notice.

(e) In performing the Additional Services, the Custodian may obtain and rely on information provided by the Employer, the applicable Investment Manager, or any of their authorized persons or third parties and shall not be obliged to inquire into the accuracy or completeness of that information.

(f) If any person (other than an affiliate or subcontractor of the Custodian) fails to provide the Custodian with any information or notice that is reasonably required for the provision of the Additional Services, the Custodian shall, once it is aware of such failure, use reasonable efforts to find alternative sources of information. The Custodian shall promptly notify the Employer if such failure or the use of alternative sources of information may materially affect the performance of the Additional Services but shall not otherwise be responsible for any impact that such failure or the use of alternative sources of information has on the Additional Services.

#### Section 6: Payment of Taxes.

The Custodian shall pay out of the Custodial Account income taxes levied or assessed under existing or future laws against the Custodial Account (including all Plan participant accounts) upon direction by a regulatory authority or agency or the Plan Administrator.

#### Section 7: Disbursement of Custodial Account Assets.

(a) Upon receipt of written direction of the Employer, Plan Administrator or designee thereof, the Custodian shall make payments from the Custodial Account to such persons in such manner and in such amounts as the Employer or Plan Administrator, as applicable, shall direct in writing, and amounts paid pursuant to such direction shall no longer constitute a part of the Custodial Account. Notwithstanding the foregoing, the Employer or Plan Administrator, as applicable, expressly reserves the right to provide direction directly to Recordkeeper regarding payments of Plan benefits or other disbursements.

(b) Unless the Plan is corporate non-qualified plan, or a Code section 457(b) non-governmental plan, as indicated in the preambles to this Custodial Account Agreement, at no time

prior to the satisfaction of all liabilities with respect to Plan participants and beneficiaries under this Custodial Account shall any part of the corpus or income of the Custodial Account be used for, or diverted to, purposes other than for the exclusive benefit of Plan participants or beneficiaries. If the Plan is a corporate non-qualified plan or a Code section 457(b) non-governmental plan, the availability of the assets held hereunder for purposes other than the benefit of Plan participants or beneficiaries shall be determined in accordance with the terms of the Plan and the terms of any Plan trust for which the assets under this Custody Account are maintained.

#### Section 8: Expenses and Compensation of Custodian.

The Custodian shall be compensated in accordance with the fee schedule provided to the Employer. If the Custodian proposes an amended written fee schedule and the Employer fails to object thereto within 90 days of its receipt, the amended fee schedule shall be deemed accepted. The Custodian reserves the right to liquidate custodial account assets in satisfaction of its fees hereunder in the event of non-payment by the Employer.

The Employer acknowledges and agrees if the Plan's assets pass through a bank account held by Custodian, it may earn credits and/or interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by Custodian are aggregated with credits and/or interest earned by its Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. Custodian will not retain credits and/or interest earned in excess of such maintenance expenses.

Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from investment option redemptions where distribution checks have not been presented for payment by participants. Credits and/or interest (i) begin to accrue on contributions, on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Plan participant or Plan representative instructions and (ii) begin to accrue on distributions, on the date the check is written or on the wire date, as applicable and end on the date the check is presented for payment or when the wire clears again the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

#### Section 9: Expenses of the Plan and Custodial Account.

The Employer shall pay, or if not paid by the Employer and the Plan so permits, the Employer shall direct the Custodian to pay from the Custodial Account, the reasonable expenses relating to the Plan and Custodial Account that are permitted by law to be paid from the Custodial Account.

#### Section 10: Reports of the Custodian.

The Custodian has accepted this Custodial Account with the understanding that the Employer or Plan Administrator, as applicable, has entered or is entering into a service agreement with Recordkeeper whereby Recordkeeper will provide recordkeeping services for all Plan assets held pursuant to this Custodial Account Agreement.. The recordkeeping reports will constitute the

reports of the Custodian.

#### Section 11: Resignation, Removal and Substitution of Custodian.

(a) The Custodian may resign at any time by giving at least 90 days' written notice to the Employer (unless the Employer deems notice of a shorter duration to be adequate). The Employer may remove the Custodian at any time by giving at least 90 days' written notice to the Custodian (unless the Custodian deems notice of a shorter duration to be adequate).

(b) In the event the contract providing a funding medium or providing for recordkeeping services is discontinued or terminated with Recordkeeper, this Custodial Account Agreement shall be terminated as well as of the date of discontinuance or termination of such contract with no further notice required from either party to the other.

(c) If no successor custodian is appointed within 90 days of such written notice of resignation or removal, the current Custodian shall be authorized to petition a court of competent jurisdiction for a declaration appointing a successor custodian and to charge the Custodial Account for the reasonable costs, fees, and expenses of such legal process, or if it so elects, shall remit all assets in its custody to any Plan Trustee(s).

(d) Upon the appointment of a successor custodian, the resigning or removed Custodian shall execute, acknowledge, and deliver all documents and written instruments necessary to transfer and deliver the Custodial Account and all rights and privileges therein to the successor custodian. Upon the appointment of a successor custodian, the resigning and removed Custodian shall be discharged from further accountability for the Custodial Account and shall be under no further duty, obligation or responsibility for the disposition by such successor custodian of the Custodial Account or any part thereof.

#### Section 12: Amendment and Termination of Custodial Account.

(a) The Employer or Plan Administrator, as applicable, and the Custodian may mutually agree at any time to amend this Custodial Account Agreement and the Custodial Account created hereby to any extent deemed advisable. No amendment to this Custodial Account Agreement shall be effective unless mutually agreed to in writing by the Employer or Plan Administrator, and the Custodian; provided, however, that Custodian's fee schedule may be amended as provided in Section 8.

(b) The Employer or Plan Administrator, as applicable, may at any time revoke this Custodial Account Agreement and terminate the Custodial Account hereby created. Such revocation and termination shall become effective upon receipt by the Custodian or its delegate of a written instrument of such revocation and termination executed by the Employer or Plan Administrator, as applicable. Upon such termination, the Custodian shall distribute or transfer the assets of the Custodial Account pursuant to and upon written direction of the Employer or Plan Administrator, as applicable.

#### Section 13: Miscellaneous Provisions.

(a) The Custodial Account Agreement and the Custodial Account hereby created

shall be governed, construed, administered and regulated in all respects under the laws of the United States and the State of Colorado.

(b) The titles of the Sections in this Custodial Account Agreement are for convenience of reference only and in case of any conflict, the text of this instrument, rather than such titles, shall control.

(c) In case any provisions of this Custodial Account Agreement shall be held illegal or invalid for any reason, their illegality or invalidity shall not affect the remaining parts of this Custodial Account Agreement, and this Custodial Account Agreement shall be construed and enforced as if the illegal and invalid provisions had never been a part of the Custodial Account Agreement.

(d) This Custodial Account Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall constitute one and the same instrument and may be sufficiently evidenced by any one counterpart.

(e) This Custodial Account Agreement shall be binding upon the respective successors and assigns of the Employer or Plan Administrator, as applicable, and the Custodian.

(f) Neither the gender nor the number (singular or plural) of any word shall be construed to exclude another gender or number when a different gender or number would be appropriate.

(g) Communications to the Custodian shall be sent to the Custodian's address indicated herein. No communication shall be binding upon the Custodian until it is received by the Custodian or its delegate. Communications to the Employer shall be sent to the Employer's principal offices or such address as the Employer may specify in writing.

Empower Trust Company, LLC  
8525 East Orchard Road  
Greenwood Village, CO 80111  
Attention: Trust Officer

**IN WITNESS WHEREOF**, this Custodial Account Agreement has been executed on the dates indicated below and is effective on the execution date of the Custodian. The persons executing this Custodial Account Agreement represent that they are duly authorized to do so.

**EMPLOYER**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

DATE: \_\_\_\_\_

**EMPOWER TRUST COMPANY, LLC**

BY:  \_\_\_\_\_

ITS: Kevin Mollman Sr Manager Trust Services

DATE: August 22, 2023





# Empower default fund election form

**Plan Name: City of Allegan 457 Plan**

**Plan Number: 100385-01**

**Effective Date:**

## Plan's default fund(s) for participant allocations:

☐ I designate the following fund(s) as the Plan's default fund:

	SDIO Code	
_____	_____	_____ %
_____	_____	_____ %

☐ I designate the following Target Date Funds/Models as default funds based on Date of Birth Year  
(For Target Date Funds Only)

(Please provide complete fund name. Percentages must total to 100%)	SDIO Code	Thresholds	
		Low DOB	High DOB
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

☐ I designate the following Risk-Based/models as default funds based on age  
(For Risk-Based Funds Only)

(Please provide complete fund name. Percentages must total to 100%)	SDIO Code	Thresholds	
		Low Age	High Age
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

# Empower default fund election form

## Unallocated plan account

☐ I designate the following fund(s) as the Plan's Unallocated Plan Account (UPA) Fund:

	SDIO Code	
_____	_____	_____ %

## Forfeiture fund

☐ I designate the following fund(s) as the Plan's Forfeiture Fund:

	SDIO Code	
_____	_____	_____ %
_____	_____	_____ %

## Default fund authorization

The default fund election is established to allow investment of participant deposits if an enrollment form is incomplete or not received by the Empower Retirement service center in Denver, CO prior to receipt of deposits. Once a participant account has been established, all new deposits will be applied to the investment options the participant has elected. It is the participant's responsibility to call KeyTalk or visit the Web Site to transfer existing monies from the default investment option.

By signing this form the plan administrator acknowledges having read, understood and elected to implement the selected options for this plan. The plan administrator acknowledges that this election supersedes the election designated previously as the plan's default fund. Changing the default fund(s) applies to new participants being added to the system. participants currently defaulted will not change to the new default fund(s).

**Authorized plan administrator signature**

**Date**

\_\_\_\_\_

**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY ("Great-West") A Stock Company**

8515 East Orchard Road, Greenwood Village, CO 80111

For inquiries, information or resolution of complaint, call 1-877-694-4015

**APPLICATION for GROUP UNALLOCATED ANNUITY CONTRACT****SECTION A. PLAN SPONSOR**

NAME OF PLAN SPONSOR

**City of Allegan, MI**

PLAN SPONSOR FEDERAL TAX ID #

**38-6004518**

STREET ADDRESS

**231 Trowbridge Street**

State of SITUS

**MI**

CITY

**Allegan**

STATE

**MI**

ZIP Code

**49010**

TELEPHONE #

TYPE OF ENTITY:

☒ Government (State, local, county, municipality, Healthcare, Public School) ☒ Corporation ☐ S Corp ☐LLC ☐ LLP☐ 501(c)(3) (tax-exempt non-profit organization) ☐ Sole Proprietorship ☐ Other (specify):

FULL LEGAL PLAN NAME (as appears on Plan Document)

**City of Allegan 457 Plan****SECTION B. CONTRACTHOLDER**

NAME OF TRUSTEE, IF DIFFERENT THAN THE PLAN SPONSOR

TRUSTEE FEDERAL TAX ID #, if applicable

STREET ADDRESS

State of SITUS

CITY

STATE

ZIP Code

TELEPHONE #

TYPE OF ENTITY:

☐ Bank ☐ Trust Company ☐ Individual(s) ☐ Other (Specify) \_\_\_\_\_**SECTION C. PRODUCT INFORMATION**☒ Fixed Annuity☐ Fixed-Variable Annuity**SECTION D. PLAN INFORMATION**

TYPE of Plan (select one):

☐ 401(k)☐ 401(a)☒ 457(b) (governmental)

Is this Plan subject to ERISA (Employee Retirement Income Security Act)?

☐ YES☒ No**SECTION E. FIXED ACCOUNT**☒ Great-West Investments Fixed Account – Series I☐ Great-West Investments Fixed Account – Series V☐ Great-West Investments Fixed Account – Series II☐ Great-West Investments Fixed Account – Series VI☐ Great-West Investments Fixed Account – Series III☐ None☐ Great-West Investments Fixed Account – Series IV**SECTION F. SERIES ACCOUNTS**☐ FutureFunds II Series Account☒ None**SECTION G. AGREEMENT AND SIGNATURES**

By signing this Application, Plan Sponsor and Contractholder, if different than Plan Sponsor, understand, accept, and otherwise agree to the provisions of the attached Group Annuity Contract, represent that the information contained on this application is true and correct to the best of their knowledge, understand that Great-West will rely on such information, and agree to notify Great-West of any changes to the information provided above. Any information provided herewith shall be considered to be representations and not warranties.

\_\_\_\_\_  
Signature of Plan Sponsor                      Date

\_\_\_\_\_  
Signature of Contractholder (Trustee)                      Date  
*if different than Plan Sponsor*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## IMPORTANT NOTICES

*Below are notices that apply only in certain states. Please read the following carefully to see if any apply in your state.*

### **Alabama, Arkansas, Louisiana, Rhode Island, and West**

**Virginia:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**District of Columbia:** WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

**Kentucky:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**Maryland:** Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**Maine, Tennessee, and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

**New Jersey:** Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

**New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**Ohio:** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

**Oklahoma:** WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

**Pennsylvania:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

# Agreements/services signature page

City of Allegan, MI 100385-01

By signing this Agreements/Services Signature Page, the parties certify that they have read and understood this Agreement and all applicable documents set forth below, that they agree to be bound by the terms and conditions of these Agreements and applicable documents listed below, and that they have the authority to sign and adopt these Agreements and applicable documents.

## **Documents that require issuance to client (do not require return to Empower)**

- RecordKeeping Services Agreement
- RecordKeeping Services Agreement Addendum (if applicable)
- Group Annuity Contract (if applicable)
- Empower Trust Company, LLC. Collective Investment Trust - Agreement (if applicable)
- Procedures for Complying with Fund Company Market Timing and Excessive Trading Policies
- Business Continuity Plans
- Privacy Notice Exhibit
- TPA Disclosure (if applicable)
- Safe Harbor Certification for the Secure Foundation Products
- Empower Advisory Group, LLC (EAG) Disclosure Brochure
- Morningstar Investment Statement Policy (if applicable)
- Millennium Trust Automatic Rollover IRA Program

## **Documents that require submission to Empower and are covered by the Signature Page**

- Contacts
- Payment Request Form (if applicable)
- Plan Service Center Application (PSC)
- Enhanced Plan Services Election Form
- PartnerLink® Authorization Form
- Services Overview Guide
- Non-Empower Trust Company, LLC. Insurance Procedures and Guidelines (if applicable)
- Conversion Mapping Authorization
- Safe harbor notice document generation services election form (if applicable)
- Self-Directed Account Information (if applicable)
- Self-Directed Account Letter of Instruction (if applicable)
- Empower Investment Advisory and Management Service Agreement (if applicable; original documentation required)
- Birth and Adoption Plan Election Form
- PPA Narrative Election Form (if applicable)
- Plan Provision Checklist (if applicable)
- Loan Policy (if applicable)

## **Documents that require a separate signature and submission to Empower**

- Group Annuity Contract Application (if applicable)
- Signature Authorization Form
- Payment Request Form (if applicable)
- Automated Mandatory Distribution & IRA Provider Election Form (if applicable per plan document de minimis rules)
- Millennium Trust Automatic Rollover Services Agreement (if applicable per plan document de minimis rules)
- Bipartisan Budget Act hardship plan election form (if applicable)
- Plan sponsor election form – CARES
- Empower Trust Company, LLC. Custodial/Trust Agreements (if applicable; original documentation required)
- Enhanced Plan Services Election Form
- Custom Asset Allocation Model Solution Authorization Form (if applicable)
- Agreements/Service Signature Page



- Morningstar Non-ERISA 3(38) Plan Sponsor Agreements Empower (if applicable)
- Morningstar Non-ERISA 3(21) Plan Sponsor Agreements Empower (if applicable)

Empower reserves the right to provide communications and documents in an electronic format. By signing below, Plan Sponsor understands, acknowledges, and consents to the electronic communication of all general Plan Sponsor communications and the electronic delivery of plan and service-related information. Certain documents delivered electronically may still require Plan Sponsor signatures. Plan Sponsor understands and agrees that the Plan Sponsor can elect to receive all communications in paper form.

IN WITNESS WHEREOF, the parties duly execute this Agreement as follows:


**Employer/Client**

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

Print Name: \_\_\_\_\_ E-Mail \_\_\_\_\_ Title: \_\_\_\_\_

Date: August 22, 2023

**Empower Retirement, LLC**

By: 

Print Name: Dan Morrison Title: SVP – Head of Government Markets Date: 8/22/2023

To the extent applicable, for the Employer's election of the participant investment advice provider under the applicable advisory services agreement:

**Empower Advisory Group, LLC**

By: 

Print Name: Ken Verzella Title: VP, Participant Advisory Services Date: 8/22/2023



August 22, 2023

City of Allegan, MI

,

Re: Plan Agreement Package

City of Allegan 457 Plan #100385-01

Thank you for selecting Empower Retirement as your retirement plan partner. The following pages contain agreements associated with the services and features you have selected for your plan. Please review these documents and retain for your records.

Your dedicated Implementation Analyst will contact you in the coming days in order to schedule an initial Welcome Call. During this call, we will discuss the various aspects of your plan, our set-up processes, and establish your implementation timeline.

Sincerely,

Implementation Services

*Empower Retirement refers to the products and services offered in the retirement markets by Great-West Life & Annuity Insurance Company (GWL&A), Corporate Headquarters: Greenwood Village, CO; Great-West Life & Annuity Insurance Company of New York, Home Office: White Plains, NY; and their subsidiaries and affiliates. All trademarks, logos, service marks, and design elements used are owned by their respective owners and are used by permission.*



## SAMPLE TERMINATION LETTER

Place on company letterhead

August 22, 2023

<Prior Vendor>

<Prior Vendor contact>

<Street Address>

<City, State Zip>

RE: Transfer of Plan Assets to Empower Retirement  
**City of Allegan 457 Plan, Contract # 100385-01**

To Whom It May Concern:

We have decided to obtain the services of another financial institution for our retirement plan. We would like to terminate our services with your company as our current provider. The effective date of this termination has yet to be determined before we schedule the transfer of assets, as this may be dependent on our contractual agreement with you and the effective date with our new provider.

Due to Sarbanes-Oxley Act, the date of transfer and delivery of transferred reports and loan conversion information must be coordinated. Do not transfer or wire any money until discussing the blackout dates with us as your current client and our new vendor, Empower Retirement. After your receipt of this letter, a representative from Empower Retirement Implementation Team will contact you to discuss and help coordinate the conversion of our plan. **Please note that we authorize you to work directly with this individual in the transfer of plan assets to Empower Retirement. All applicable recordkeeping information must be provided via electronic media (spreadsheet file, tape, etc.) to our new vendor via secured delivery.**

Wiring instructions will be provided after we have coordinated the receipt of required information as outlined above.

Thank you for your attention to this matter.

Sincerely,

Plan Sponsor Authorized Signor

cc: Troy Humphrey (Implementation Analyst)  
Empower Retirement Implementation



## PRIVACY NOTICE

REV 9/2019

<b>FACTS</b>	What does Great-West Life & Annuity Insurance Company (Empower Retirement) do with your personal information?
<b>WHY?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share and protect your personal information. Please read this notice carefully to understand what we do.
<b>WHAT?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"><li>• Social Security number and account balances.</li><li>• Retirement assets and transaction history.</li><li>• Employment information and income.</li></ul> <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>
<b>HOW?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information, the reasons Empower Retirement chooses to share and whether you can limit this sharing.

REASONS WE CAN SHARE YOUR PERSONAL INFORMATION	DOES EMPOWER RETIREMENT SHARE?	CAN YOU LIMIT THIS SHARING?
<b>For our everyday business purposes</b> — such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes</b> — to offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	Yes	No
<b>For our affiliates' everyday business purposes</b> — information about your transactions and experiences	Yes	No
<b>For our affiliates' everyday business purposes</b> — information about your creditworthiness	No	We don't share
<b>For nonaffiliates to market to you</b>	No	We don't share

### QUESTIONS?

Call toll-free at 833-346-7283 or go to [www.empower-retirement.com/privacy](http://www.empower-retirement.com/privacy)



WHO WE ARE	
Who is providing this notice?	Companies owned by Great-West Life & Annuity Insurance Company. A list of companies is provided at the end of this notice.
WHAT WE DO	
How does Empower Retirement protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include physical, technical and procedural safeguards, such as building and system security and personnel training.
How does Empower Retirement collect my personal information?	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"><li>• Provide account information or apply for a loan.</li><li>• Enter into an investment advisory contract or seek advice about your investments.</li><li>• Tell us about your investment or retirement portfolio.</li></ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"><li>• Sharing for affiliates' everyday business purposes — information about your creditworthiness.</li><li>• Affiliates from using your information to market to you.</li><li>• Sharing for nonaffiliates to market to you.</li></ul> <p>State laws and individual companies may give you additional rights to limit sharing.</p>
DEFINITIONS	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"><li>• Our affiliates include companies with the Empower, Empower Retirement or Great-West names, as listed below, and other financial companies such as Advised Assets Group, LLC and FASCore, LLC.</li></ul>
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"><li>• Empower does not share with nonaffiliates so they can market to you.</li></ul>
Joint marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"><li>• Empower doesn't jointly market.</li></ul>
WHO IS PROVIDING THIS NOTICE?	
Great-West Life & Annuity Insurance Company; The Great-West Life Assurance Company (US operations); Great-West Life & Annuity Insurance Company of New York; Great-West Financial Retirement Plan Services, LLC; Advised Assets Group, LLC; GWFS Equities, Inc.; The Canada Life Assurance Company (U.S. operations); FASCore, LLC; Great-West Life & Annuity Insurance Company of South Carolina; Great-West Capital Management, LLC; Great-West Funds, Inc.; and Great-West Trust Company, LLC	

**Item 1 – Cover Page**

**EMPOWER ADVISORY GROUP, LLC (EAG)**

**Disclosure Brochure for:**

**Online Advice &  
Managed Account Service**

8515 East Orchard Road  
Greenwood Village, CO 80111

Telephone: 855-756-4738

March 31, 2023

This Brochure provides information about the qualifications and business practices of Empower Advisory Group, LLC (EAG). Specifically, this Brochure provides information on the advisory services provided by EAG and sub-advised by Morningstar Investment Management, LLC (Morningstar Investment Management). If you have any questions about the contents of this Brochure, please contact us at 855-756-4738. The information in this Brochure has not been approved or verified by the Securities and Exchange Commission (SEC) or by any state securities authority.

EAG is a registered investment adviser under the Investment Advisers Act of 1940 (Advisers Act). Registration of EAG does not imply any level of skill or training. Additional information about EAG is available on the SEC website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov) or on EAG's website at [www.empower.com/eag](http://www.empower.com/eag).

## **Item 2 – Material Changes**

This section of the Brochure highlights and discusses any changes that were made since the Adviser's last update on August 1, 2022. This Brochure was updated to address any out-of-date information. Additionally, we made other changes throughout the document to provide information clearly and concisely. There were no material changes to this Brochure from its last update.

Additional information about EAG is also available via the SEC's web site [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). The SEC's web site also provides information about any person affiliated with EAG who is registered, or are required to be registered, as an investment adviser representative with EAG.

### **Item 3 – Table of Contents**

Item 1 – Cover Page .....	1
Item 2 – Material Changes .....	2
Item 3 – Table of Contents.....	3
Item 4 – Advisory Business .....	4
Item 5 – Fees and Compensation .....	8
Item 6 – Performance-Based Fees and Side –by Side Management.....	10
Item 7 –Types of Clients .....	10
Item 8 – Methods of Analysis and Investment Strategies and Risk of Loss .....	10
Item 9 – Disciplinary Information .....	13
Item 10 – Other Financial Industry Activities and Affiliations .....	13
Item 11 – Code of Ethics, Participation or Interest in Client Transactions and Personal Trading.....	16
Item 12 – Brokerage Practices.....	17
Item 13 – Review of Accounts .....	18
Item 14 – Client Referrals and Other Compensation .....	19
Item 15 – Custody.....	19
Item 16 – Investment Discretion .....	19
Item 17 – Voting Client Securities.....	19

#### **Item 4 – Advisory Business:**

##### **Description of Advisory Firm**

EAG is a registered investment adviser under the Advisers Act since 2000. It submits notice filings with state securities divisions in all 50 states, the District of Columbia, Guam, US Virgin Islands, and Puerto Rico. EAG offers investment management and advisory services primarily to plan sponsors of employer-sponsored retirement plans such as 401(a), 401(k), 403(b) and 457 plans, including government entities and their participants, and to all account holders of the Empower Premier IRA, Empower Premier Investment account and Empower Managed Portfolio accounts. EAG may also be engaged by individuals to provide investment advisory services within or alongside Personal Strategies+ Advisory Services or Core Managed Account Advisory Services. EAG does not choose the investments offered in employer-sponsored retirement plans. EAG serviced plans receive recordkeeping services through Empower Retirement, LLC (Empower), the recordkeeping entity affiliated with EAG. More information about EAG's services, including an applicable brochure, can be obtained by contacting EAG at the number provided on the cover page of this Brochure or by visiting EAG's website at [www.empower.com/eag](http://www.empower.com/eag). EAG's principal place of business is Greenwood Village, CO.

EAG is a wholly owned subsidiary of Empower Annuity Insurance Company of America (EAICA), an insurance company domiciled in the State of Colorado. EAICA is a direct, wholly owned subsidiary of Empower Holdings, Inc. (EHI), a Delaware holding company. EHI is a direct wholly owned subsidiary of Great-West Lifeco U.S. LLC. (Lifeco U.S.) and an indirect wholly owned subsidiary of Great-West Lifeco Inc. (Lifeco), a Canadian holding company. Lifeco is a subsidiary of Power Financial Corporation (Power Financial), a Canadian holding company with substantial interests in the financial services industry. Power Corporation of Canada (Power Corporation), a Canadian holding and management company, has voting control of Power Financial. The Desmarais Family Residuary Trust has voting control of Power Corporation, through a group of private holding companies that it controls.

##### **Types of Services Discussed in this Brochure:**

EAG provides a range of direct account holder-level and participant-level investment services as well as services provided indirectly through private-label arrangements with institutional partners (the Services). The Services include Online Advice (OA) and the Managed Account service (MA Service) or My Total Retirement (MTR). Other services that may be available to clients include Spend-Down Advice, Financial Planning Service and Retirement Income Projection Tools and Services. EAG provides its Services through a proprietary, computer-based software program that is developed and maintained by Morningstar Investment Management.

In addition, EAG provides sub-advisory and technology services to outside adviser firms through a service called Advisor Managed Accounts (AMA). This service enables the AMA firms to offer their own investment advisory and management services within retirement plans serviced by Empower. The total sub-advised assets as of December 31, 2022, for this service totaled \$2,647,179,764.37.

**There is no guarantee provided by any party that participation in any of the advisory services will result in a profit.**

##### **Morningstar Investment Management LLC:**

Morningstar Investment Management is a registered investment adviser wholly owned by Morningstar, Inc. and is not affiliated with EAG or any company that is affiliated with EAG. Morningstar Investment Management is located in Chicago, Illinois. A copy of its Form ADV Part 2A brochure may be obtained at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov). Morningstar Investment Management serves as an independent financial expert (IFE) in accordance with the Department of Labor *SunAmerica* Advisory Opinion 2001-09A, dated December 14, 2001 (the *SunAmerica* Opinion). Morningstar Investment Management uses its proprietary methodology to evaluate the available investment options in a retirement plan and to develop an individualized investment strategy for plan participants and account holders. The plan, plan sponsor or plan fiduciary must select and continuously maintain investment options that

cover broad asset categories. The investment options selected for the plan generally consist of a broad range of asset classes. More information is provided under Item 10 – Other Financial Industry Affiliations. Item 8, Methods of Analysis and Investment Strategies and Risk of Loss discusses the general risks of investing. The risks associated with the investment options can vary significantly with each particular investment category and the relative risks of categories may change. Accordingly, EAG may make changes from time to time regarding the availability of certain investment options. The fees, risks, responsibilities of plan sponsor/plan provider/participant and limitations for each of these services are discussed in greater detail below. Fees and expenses are also explained in the respective prospectus, which accompanies each investment option, as applicable.

Certain EAG's Services rely on Morningstar Investment Management's proprietary methodology, which is based on a review of available quantitative data to analyze and screen the investment options within a plan. Morningstar Investment Management also applies qualitative analysis by investment professionals, such as evaluations of investment managers, portfolios, and individual investments. The primary sources of information used by Morningstar Investment Management are the extensive databases and methodologies of Morningstar Investment Management and/or its affiliates, and interviews with investment managers. Other sources include financial publications, annual reports, prospectuses, press releases, and SEC filings. Morningstar Investment Management combines this information with other factors — including actuarial data, stock market exposure, probability analysis, and mean-variance optimization — into its proprietary software program to analyze a complex set of market data and variables. The result is an advanced model capable of providing investment recommendations and projections of different outcomes. Using this model, Morningstar Investment Management develops an investment strategy tailored to your investment goals.

## **1. Online Advice**

OA is based on the software program developed by Morningstar Investment Management. It provides the participant with retirement goal forecasting advice and fund-specific asset allocation recommendations tailored to the specific participant's financial situation and retirement goals. OA is tailored for individuals who wish to manage their own retirement account with the assistance of the service tools and investment advice.

OA provides participants with a retirement goal forecast through various assumptions and hypothetical financial and economic scenarios. These scenarios are based on factors such as historic returns, market volatility, cross-correlations, calculated risk premiums, interest rate fluctuations, inflation, and market conditions; all of which have limitations. The participants can interact with OA to see how changes in their decisions about their savings, expected retirement age, level of investment risk and retirement income goal may affect the system's forecast. Participants who enroll in OA are responsible for determining the portfolio allocation that is best suited for their needs and investment strategy.

The investment recommendations provided by OA are limited to the available investment options within the participant's specific retirement plan. OA does not make any recommendations about investing in any individual stocks or other asset classes, including employer stock that may be an investment option under the participant's retirement plan.

### **Participant Responsibilities:**

Participants are responsible for making their investment decisions and may implement OA recommendations either online or by phone. Participants are also solely responsible for reviewing and updating the information they input in the OA service with respect to the completeness, accuracy, and timeliness of the information. Participants should review their retirement accounts periodically to monitor changes in the market and the value of their investments. A failure by an individual to review and update their account information through OA may materially affect the content and value of the service.



**Limitations on the Online Advice Service:**

The recommendations provided through OA are estimates based on the responses and information provided by the participants. Neither EAG nor Morningstar Investment Management make any guarantees or warranties, express or implied, as to the accuracy, timeliness, or completeness of such information. The OA service is also subject to the general market and financial conditions existing at the time of use.

The retirement goal forecast and investment recommendations provided by OA is not a guarantee of future results, nor is it a guarantee that a participant will achieve their retirement goals. OA should only be used by participants as a tool in their retirement planning and not as a substitute for their own informed judgment. Neither EAG nor Morningstar Investment Management has an obligation to update any information for a specific individual or to proactively contact the individual to obtain updated information. A failure by an individual to review and update account information through OA may materially affect the content and value of services received from EAG.

**2. Managed Account Service (also known as My Total Retirement)**

EAG offers a discretionary managed account service (Managed Account, MA service or MTR). This is a professional and flexible asset management program based on data resulting from the methodologies and proprietary software program developed and employed by Morningstar Investment Management. In the MA service, EAG has discretionary authority over the allocation of available investment options, without prior participant approval of each transaction. All ongoing investment transfers and investment direction changes are implemented for individuals enrolled in the MA service.

The MA service designs a specific asset allocation portfolio for the participant that reflects the individual's retirement goals, life stages, specified risk constraint and overall financial situation. The MA service considers plan assets and other assets and investments not included within the plan if provided by the participant.

On a periodic basis, individual accounts in the MA service are re-forecasted, which may include rebalancing and reallocating the individual's asset allocation portfolio. This is done to maintain alignment with the allocation percentages determined by Morningstar Investment Management through various assumptions and hypothetical financial and economic scenarios. Participants receive an account update and forecast statement annually and can update their personal information at any time by calling EAG at their plan's toll-free customer service number, or by visiting the appropriate website. Some plan providers may offer a guaranteed lifetime benefit withdrawal option to plan participants who are approaching retirement or are in retirement. If the plan provider offers this service and if the participant meets the retirement criteria established by the plan provider or plan sponsor, the investment strategy may include a suggested amount that can be withdrawn while maintaining income throughout retirement. It may also include information about allocating a portion of the managed account balance for the purchase of an annuity or other guaranteed income product.

**Limitations on the Managed Accounts Service:**

When participants enroll in the MA service, they must transfer and allocate their entire retirement account balance to the Managed Account. For participants, there is an exception of employer stock and employer directed monies. Partial management of participants' account where they are invested in other investment options (such as individual stocks or other asset classes outside of the available investment options) while also participating in the MA service is not an available alternative. Participant balances in any of these investment options must be liquidated, subject to plan and/or investment provider restrictions, or the participant cannot be enrolled in the MA service. For participants, certain outside non-advisable assets may be permitted while also participating in the MA service. However, the participant's entire advisable account balance must be allocated to the MA service.

Once enrolled in the MA service, participants delegate certain account management functions to EAG including functionality for fund-to-fund transfers, change fund allocations, the dollar cost averaging tool and/or the rebalancer tool. However, individuals in the MA service retain full inquiry access to their accounts and may still

request approval for loans or take a distribution withdrawal, if permissible. Participants may un-enroll at any time from the MA service. Once they do so, the participants resume full responsibility for the investment management of their accounts. An individual may un-enroll online or by contacting an EAG investment adviser representative.

### **3. Spend-Down Advice**

Participants who are enrolled in any of EAG's Services discussed above are also provided with an additional feature of Spend-Down Advice which includes retirement planning tools. The Spend-Down Advice illustrates how long the desired income may last in retirement and determines how much spendable income the participant may be able to sustain throughout their retirement. The Spend-Down Advice provides both the amount and sources of income available throughout their retirement. The services provided under Spend-Down Advice provide projections of spendable income and do not constitute investment advice under the Investment Advisers Act of 1940.

### **4. Retirement Income Projection Tools and Services**

EAG may offer online tools and services for participants to convert projected or actual retirement savings into estimated monthly retirement income. This interactive retirement planning service consists of various retirement income projection tools. These tools are informational in nature, do not reflect actual investment results, and are not guarantees of future results. These tools do not constitute investment advice under the Investment Advisers Act of 1940.

#### **Enrollment in EAG's Services:**

Plan providers and plan sponsors select the Service(s) (i.e., OA and/or the MA service) that are made available to plan participants and how participants can authorize the Service(s). Participants must agree to the terms of a user agreement (Terms of Service). Terms may be amended by EAG from time to time, to allow continued use of any of the Services. As part of a participant's enrollment in the MA service, the participant receives a MA Welcome Kit shortly after enrollment. The participant additionally receives an Annual Kit. Each kit provides the participant an update on their account and information on reaching their retirement goals.

In certain instances, Plan Sponsors may authorize EAG to enroll participants automatically in the MA service based on information provided to EAG by the Plan Sponsors. In such instances, current participants in the Plan receive the Terms of Service and are given a defined period of time in which to cancel or opt-out of the MA service without incurring an advisory fee (the Free Period or Promotional Period). Participants' automatic enrollment in the Service by the Plan Sponsors is based upon personal financial information provided by the Plan Sponsor, including date of birth, salary, gender, and state of residence. Participants may review this information online or by contacting an EAG investment adviser representative. Participants are solely responsible for reviewing the personal financial information they or their Plan Sponsor provide, and for notifying EAG of any changes or updates. Participants who are eligible for their employer-sponsored retirement plan or that otherwise elect to opt-in after the Free Look or Promotional Period concludes, may not be eligible for a waiver of advisory fees that is otherwise available in the Free Look or Promotional Period.

The advice and recommendations provided through the Services are based on the responses or other information provided by or about the participant by the Plan Sponsor and/or the participant. Neither EAG nor Morningstar Investment Management make any guarantees or warranties, express or implied, as to the accuracy, timeliness, or completeness of such information. The Services are also subject to the general market and financial conditions existing at the time of usage. The retirement goal forecast and investment advice recommendations are not a guarantee of future results and are not a guarantee that a particular person will achieve their retirement goals.

#### **Termination of Services:**

Participants may cancel their participation in OA or the MA service at any time. Participants utilizing OA must complete their cancellation online. Participants utilizing the MA service may cancel online or by calling an EAG investment adviser representative at the toll-free customer service number.

After cancellation of the:

1. OA service, the individual will no longer have access to the online investment recommendations. Because EAG does not effect changes to the participant's/account holder's asset allocation and account balances, the individual's balances will not be affected **unless and until** the individual affirmatively changes their asset allocation and balance after the cancellation of OA.
2. MA service, the participant will have the ability to make allocation and investment option changes to their account, usually one to two business days following cancellation. Accordingly, the participant's asset allocation will remain the same as established in the MA service **unless and until** the participant affirmatively changes his/her asset allocation after cancellation of the MA service.

**Participant Information:**

The use and storage of any information is provided at the individual's sole risk and responsibility. Such information includes, without limitation, an individual's personal and non-public information, account number, password, identification, portfolio information, account balances and any other information available on an individual's personal computer. The individual is responsible for providing and maintaining the communications equipment (including personal computers and modems) and telephone or other services required for accessing and using electronic or automated services, and for all communications service fees and charges incurred by the individual in accessing these services. EAG shall not bear any responsibility for either errors or failures caused by the malfunction of any computer, communication systems, any computer viruses, and related problems that may be associated with the use of the Services.

**Assets Under Management:**

With respect to the services provided by EAG, as of December 31, 2022:

Discretionary investment management among all services:	\$70,413,154,579
Non-discretionary investment advisory services among all services in the amount of:	\$15,683,122,665
Total discretionary and non-discretionary investment management and advisory services in the amount of:	\$86,096,277,244

**Item 5 – Fees and Compensation:**

For employer-sponsored retirement plans, fees are subject to negotiation by the plan sponsor which may include plan-level pricing credits depending on the various option(s) selected by the plan for its participants. In some instances, if agreed to by the plan, the plan sponsors or recordkeeper may pay EAG's fees on behalf of plan participants. EAG reserves the right to offer discounted fees or other promotional pricing or to waive fees for any particular period of time subject to proper notification and disclosure.

1. Online Advice Service Fees

EAG does not charge a separate fee for OA.

2. Managed Account Service Fees

Participants may be charged a fee for the MA service based on the Terms of Service with the participant and/or the plan sponsor's agreement with EAG. EAG may offer plans tiered pricing schedules based on the enrollment method the plan uses for offering or enrolling its participants in the MA service. Such options

include, but are not limited to, pricing schedules based on the plan sponsor's selection of an opt-out versus opt-in enrollment methodology. Applicable pricing schedules for each of the options are made available to the plan sponsors, which they may use to select the option for their employer-sponsored retirement plan.

Pursuant to the Terms of Service and/or the plan sponsor's agreement with EAG, the fee for the MA service is based upon a percentage of assets managed. The applicable fee for the Managed Account service varies. It is fully disclosed to participants prior to or at the time of enrollment within the enrollment disclosure materials. In addition, the fee is disclosed to participants in the Terms of Service when the participant enrolls in the MA service. The maximum annualized fee that may be charged to a participant is 0.65% of the participant's account balance.

The advisory fee is debited from the participant's account following each applicable billing period. If a participant cancels enrollment in the MA service at any time within a given billing period, pursuant to the participant's Terms of Service and/or the plan sponsor's agreement with EAG, the participant's fee is based upon a percentage of assets managed during the billing period. The fee will be debited from the participant's account or paid by the plan sponsor according to EAG's agreement and procedures. If the plan sponsor terminates its service agreement with the plan's recordkeeping service provider, the participant's advisory fee is debited as of such date of termination or paid by the plan sponsor according to EAG's agreement and procedures.

### 3. Retirement Income Projection Tools and Services

EAG does not charge a separate fee to plan sponsors or participants for the retirement income projection tools and services.

### 4. Other Fees and Expenses

In addition to any previously negotiated and disclosed recordkeeper fees, commission payments and other administrative servicing fees and expenses for each plan, EAG may pay cash compensation or referral fees to unaffiliated firms for soliciting and referring plan sponsors and their participants to enroll in EAG's MA service.

Accounts invested in mutual funds, separate accounts, collective investment alternatives and other investments may be subject to other investment fees. Fees such as fund operating expenses or redemption fees may be imposed at the investment company level. Information about the fees imposed by specific investment choices is available in the fund prospectuses or offering memoranda for the securities. EAG may allocate member assets to funds or investment alternatives with these fees or costs. All securities transactions that occur as a result of the services provided by EAG as described in this Brochure are executed by Empower Financial Services, Inc., (EFSI) for which it may receive compensation in the form of 12b-1 fees or other compensation from mutual fund companies or from the other investments that may be available as program investment options.

A participant will pay advisory fees to EAG for the MA service and indirectly to ECM if Empower Funds are included in the retirement plan investment options. The fees paid to ECM for management of the Empower Funds are included in the fund share price.

EAG and EFSI representatives may recommend that you use the Services. If you elect to use MA, EAG will earn additional compensation in the form of advisory fees. Also, EAG and EFSI representatives are eligible for incentive compensation, through bonus payments, in addition to their salary, for communication, education and/or assisting plan participants to enroll in the Services. The incentive compensation an EAG or EFSI representative receives depends on position type, but generally is calculated based on Empower's profitability and the achievement of individual performance goals that may include factors unrelated to the adoption of investment products or services offered through Empower, such as the Services.

#### **Item 6 – Performance-Based Fees and Side –by Side Management**

EAG does not charge any performance-based or side-by side management fees.

#### **Item 7 –Types of Clients**

EAG provides investment advice to participants in their retirement plans for which Empower provides recordkeeping services. Members typically must be considered residents of the United States, the U.S. Virgin Islands, Guam, or Puerto Rico. The plan sponsor may apply additional restrictions for participation due to plan or regulatory requirements.

EAG may also be engaged by individuals to provide investment advisory services within or alongside an Empower Premier IRA, an Empower Managed Portfolio account, an Empower Premier Investment Account, Personal Strategies+ Advisory Services or Core Managed Account Advisory Services.

#### **Item 8 – Methods of Analysis and Investment Strategies and Risk of Loss**

The Services described in this Brochure are based on the proprietary asset allocation and retirement income projection methodologies developed by Morningstar Investment Management. The development of investment advice by Morningstar Investment Management involves the investment methodologies across the products and services described herein. Morningstar Investment Management or its affiliates focus on specific investment areas such as capital market assumptions and a valuation-driven approach to asset allocation.

##### **Analysis Methods:**

In providing advisory services, Morningstar Investment Management reviews available quantitative data to analyze and screen the investment options within a plan. The portfolios are typically constrained to a set of investment options defined by the plan sponsor, which may include EAG affiliated investment products. The analysis will include quantitative analytics and fundamental research on the investment options available. Morningstar Investment Management draws on Morningstar's comprehensive database of fund and security analytics.

Morningstar Investment Management uses a combination of portfolios and customizations as part of a larger portfolio construction process. For MA and OA, they generate unique portfolios (ranging from conservative to aggressive) for each retirement plan or product using a customized approach to blending traditional asset allocation models with liability-driven investing and decumulation strategies. Which asset classes and sub-asset classes are used to build these model portfolios is dependent on the specific investment options available within the plan. Using this model, they develop an investment strategy tailored to your investment goals and assign you to one of those portfolios. They start with all of the available information received from the service provider and/or you and then make assumptions about certain pieces of information. You have the ability to review and refine some of these assumed data points through the website or over the phone. These assumptions can have a significant impact on the strategies created for you and are related to social security income, salary growth, inflation rates, retirement income goal, and risk capacity. They combine this information with other factors into a proprietary software program that can provide investment recommendations and a projection of different outcomes. They use a concept called total wealth to determine your risk capacity. This helps determine an appropriate target risk level for your retirement account by considering your risk exposure in all your other accounts that you've told us about that are earmarked for retirement. The total wealth methodology accounts for your financial capital (total saved assets and tradeable assets such as stocks and bonds) as well as your human capital (future earnings and savings potential). Using this methodology, they assign a target risk level based on your total economic worth.

The target risk level changes over time to help ensure you are still investing in a portfolio for your specific situation and risk capacity. In general, we try to provide a smooth transition from an aggressive equity portfolio to a more conservative fixed portfolio as you near retirement.

**Investment Strategy:**

If accumulating for retirement, the investment strategy is generally based on information such as retirement account balances, expected retirement age, savings rate and other preferences provided by the individual. If you have already retired, and if the plan provider offers a guaranteed lifetime withdrawal benefit program, the investment strategy is based upon account balances, additional cash flows, and life expectancy. This retirement strategy may include some or all of the following:

- Retirement Income Goal (accumulation phase): The retirement income goal is the projected amount of money after tax that will be needed by the individual throughout retirement. This calculation can be based on current income, adjusted to reflect the estimated dollar value at retirement age. Typically, they use an amount equal to 100% of your take-home pay (although some plan providers may request a different rate, e.g., 80% of gross pay), and then the Services project the after-tax value of that amount at retirement age to determine a retirement income goal. The individual has an option to change this projected retirement income amount.
- Income Outlook (accumulation phase): The income outlook is a projection of the annual income that the individual may receive during retirement. This is based on an annualized view of the accumulated investment wealth, combined with social security benefits and any pension or other income provided to EAG.
- Total Retirement Income (in-retirement phase): If your plan provider or plan sponsor offers the in-retirement services, total retirement income is the projected amount of money, that one can expect to receive on an annual basis in order to maintain income throughout retirement.
- IMPORTANT: When Morningstar Investment Management determines the income projections described above, these projections are based on hypothetical performance data and do not represent actual or guaranteed results. Your projections may vary over time with each additional use of the service.

**Estimated Tax:**

Morningstar Investment Management estimates federal, state income, and capital gains taxes based on marginal tax rate calculations. These calculations are used when Morningstar Investment Management conducts income simulations. Tax data is updated annually based on the United States Internal Revenue Code (IRC) and similar state tax data. Morningstar Investment Management uses income data for the individual and their spouse/partner to estimate federal and state tax exposure. The tax exposure is appropriately reduced for pre-tax deferrals, tax-deferred capital gains, and yield and distribution of Roth proceeds. Based on the information that the individual provides, Morningstar Investment Management provides an estimate of the tax exposure but may not include all tax considerations. Please consult a tax adviser for a complete understanding of your tax situation.

**General Risks of Investing:**

Investing in securities involves risk of loss that clients should be prepared to bear. **Neither EAG nor Morningstar Investment Management or their affiliates guarantees that the recommendations will result in achieving the retirement income goal. Neither EAG nor Morningstar Investment Management or their affiliates can guarantee that negative returns can or will be avoided in any of the recommendations. An investment's future performance may differ substantially from its historical performance and as a result, may incur a loss. Past performance is no guarantee of future results. Additionally, the plan provider may make changes from time to time with respect to the investment options available in the plan.**

While a diversified investment portfolio, including a portfolio of investment products representing different asset categories, can mitigate some risks, it does not and cannot prevent all loss. Ultimately, such risks are borne by the investor.

Below are some of the common factors that can produce a loss in a client's account and/or in a specific investment product or asset category:

- **Market Risk:** Stock and bond markets are volatile and can decline significantly in response to adverse issuer, political, regulatory, market, or economic developments in the U.S. and in other countries. Market risk may affect a single company, a sector of the economy, a country or geopolitical region, or the market as a whole. Market risk may impact stock and or bond markets in unanticipated and different ways.
- **Business Risk:** These risks are associated with a particular industry or a particular company within an industry.
- **Capitalization Risk:** Small-cap and mid-cap companies may be hindered due to limited resources or less diverse products or services. Their stocks have historically been more volatile than the stocks of larger, more established companies.
- **Category or Style Risk:** During various periods of time, one category or style may underperform or outperform other categories and styles.
- **Credit Risk:** The risk that the issuer of a security may be unable to make interest payments and/or repay principal when due. A downgrade to an issuer's credit rating or a perceived change in an issuer's financial strength may affect a security's value and impact the performance of the issue – along with any mutual fund or exchange-traded fund which holds it.
- **Interest Rate Risk:** The market value of a debt security is affected significantly by changes in interest rates. When interest rates rise the security's market value declines. When interest rates decline, market values rise. The longer bond maturity results in the greater the risk and the higher yield. Conversely, the shorter bond maturity results in the lower risk and the lower yield.
- **Inflation Risk:** When any type of inflation is present, purchasing power may be eroding at the rate of inflation.
- **Reinvestment Risk:** The risk that future proceeds from investments may have to be reinvested at a potentially lower rate of return (i.e., interest rate). This relates primarily to fixed income securities.
- **Exchange-traded funds:** Exchange-traded funds present market and liquidity risks because they are listed on a public securities exchange and are purchased and sold via the exchange at the listed price. The price will vary based on current market conditions and may deviate from the net asset value of the exchange-traded fund's underlying portfolio. There may also be an inactive market for certain funds, and/or losses from trading in secondary markets.
- **Target Date Funds:** Generally, the asset allocation of each target date fund will change on an annual basis with the asset allocation becoming more conservative as the fund nears the target retirement date. The target date is the approximate date when investors plan to start withdrawing their money. The principal value of the fund(s) in a plan's lineup is not guaranteed at any time, including at the time of target date and/or withdrawal.
- **An investment in a money market fund is not insured or guaranteed by the FDIC or any other government agency.** Although some money market funds such as U.S. Government money market funds strive to preserve the value of the investment at \$1.00 per share, it is possible to lose money by investing in a money market fund. Additionally, other money market funds may operate under new rules and regulations permitting them to have a floating value per share. A floating value may be more or less than \$1.00 per share depending on market conditions and impose liquidity/redemption fees for large or frequent withdrawals.

For more complete information about any of the mutual funds or investment product available within the retirement plan, please contact your retirement plan service provider.

**Risks Associated with Particular Types of Securities:**

Neither EAG nor its sub-advisers recommend a particular type of security. The plan sponsor or its agent is responsible for determining the retirement plan's menu of investment options. It is the participant's responsibility for reading all disclosure and related materials, including prospectuses, statements of additional information and other similar material.

**Item 9 – Disciplinary Information**

Registered investment advisers are required to disclose all material facts regarding any legal or disciplinary events that would be material to your evaluation of EAG or the integrity of EAG's management. EAG has no legal or disciplinary event to report relative to this Item.

**Item 10 – Other Financial Industry Activities and Affiliations**

EAG is not a registered broker-dealer. However, due to the organizational structure of EAG's parent company, EAICA, certain registered representatives of EFSI are also supervised persons of EAG and are required to comply with EAG policies and procedures when acting in that capacity. EAG and its management persons are not registered as a futures commission merchant, commodity pool operator, a commodity trading advisor, or an associated person of the foregoing entities.

**Other Financial Industry Affiliations:**

EAG has arrangements that are material to its advisory business or its clients/participants with the related entities shown below. These related entities may receive certain fees that are unrelated to EAG's fees for its Services.

**Recordkeeping and Administrative Services Company:**

*Empower Retirement, LLC (Empower)* is a comprehensive administrative and recordkeeping services provider for financial institutions and employers, which include educational, advisory, enrollment, and communication services for employer-sponsored defined contribution plans and associated defined benefit plans under Internal Revenue Code Section 401(a), 401(k), 403(b), 408, and 457.

**Insurance Companies:**

*Empower Annuity Insurance Company of America (EAICA)* is an insurance company domiciled in the State of Colorado. EAG is a wholly owned direct subsidiary of EAICA. EAICA, pursuant to various agreements, may provide investment products, recordkeeping, and other administrative services through its affiliates.

*Empower Life & Annuity Insurance Company of New York (ELAINY)* is an insurance company domiciled in the State of New York. EAG is an affiliate of ELAINY through common ownership where EAICA is the sole owner of both EAG and ELAINY. ELAINY, pursuant to various agreements, may provide investment products and administrative services through its affiliate, Empower, to retirement plans for which EAG may also provide its services.

*Empower Annuity Insurance Company (EAIC)* is an insurance company domiciled in the State of Connecticut. EAG is an affiliate of EAIC through common ownership where EAICA is the sole owner of both EAG and EAIC. EAIC, pursuant to various agreements, may provide investment products and administrative services individually and through its affiliate, Empower, to retirement plans for which EAG may also provide its services.



**Broker-Dealer:**

*Empower Financial Services, Inc. (EFSI)*, an affiliate of EAG, is a registered limited broker-dealer and wholly owned subsidiary of EAICA. EFSI may provide wholesaling, direct sales, enrollment and/or communication services to retirement plans and their participants for which EAG may also provide its services. All transactions which occur as a result of participation in the Service are executed by EFSI. EFSI may receive compensation in the form of 12b-1 fees or other compensation from the mutual fund companies or from the other investments that may be available as investment options.

**Trust Company:**

*Empower Trust Company, LLC (ETC)* is a trust company and affiliate of EAG. ETC is a wholly owned subsidiary of EAICA. ETC is chartered under the laws of the State of Colorado. ETC may provide discretionary or directed trustee and/or custodial services for EAG's clients. ETC also serves as the trustee for certain collective investment trusts, which may be available as investment options, and is the custodian of all Empower Premier IRA accounts.

**Investment Company:**

*Empower Funds, Inc. (EFI)* is an investment company affiliated with EAG. It is registered under the Investment Company Act of 1940. Empower Funds may provide investment products to retirement plans and IRAs for which EAG may also provide its services. Empower Funds is managed by Empower Capital Management, LLC as discussed below. Shares of Empower Funds may be available for purchase by retirement plans advised by EAG or to account holders of the Empower Premier IRA.

**Investment Advisers:**

Empower Capital Management, LLC (ECM), an affiliate of EAG, is an investment adviser for Empower Funds and is registered under the Investment Advisers Act of 1940. It is a wholly owned subsidiary of EAICA. EAG provides managed account and advice services to participants in certain defined contribution plans. It also provides services to account holders of the Empower Premier IRA which may have as investment options certain portfolios of Empower Funds managed by ECM.

*Putnam Investment Management, LLC* is a registered investment adviser (PIM). EAG is under common control with PIM and is an affiliate of PIM. Shares of Putnam retail mutual funds may be available for purchase by retirement plans or by the Empower Premier IRA holders. PIM serves as a sub-adviser to certain funds in the Empower Core Strategies lineup.

*Irish Life Investment Managers Limited* – a Dublin, Ireland based, SEC registered investment adviser. ILIM is part of the Great-West Lifeco, Inc. (GWL) group of companies; GWL has operations in Canada, the United States, Europe, and Asia through ownership of companies including EAICA and PIM. EAG is wholly owned subsidiary of EAICA. EAICA is an indirect wholly owned subsidiary of GWL which controls ILIM. ILIM manages the index series of Empower Funds.

**Branding:**

The affiliated companies of EAG, ECM, EFSI, EAICA, EAIC, ELAINY, Empower Funds, Empower Holdings, LLC, Empower Retirement, LLC, and ETC operate under the multiple brands of Empower, Empower Retirement and Empower Institutional depending upon the products, services and retirement markets involved. These brands do not materially affect the internal structure of EAG or EAG's corporate ownership.

**Conflicts of Interest:**

The investment options available in a plan are generally established by the plan sponsor/client through which our services are delivered. In some cases, the plan investment options may include, or be comprised solely of, affiliated

investment options of the institutional client or of EAG. EAG does not receive compensation from its parent company or any of its affiliates as a result of these allocations.

EAG has a relationship with Morningstar Investment Management wherein Morningstar Investment Management acts as sub-adviser for the advisory services. EAG has entered into an agreement with Morningstar Investment Management under which, EAG receives advisory services fees for providing services to retirement plan clients.

EAG mitigates these conflicts of interest related to affiliated investment options by utilizing Morningstar Investment Management as sub-adviser who remains independent from EAG and its related persons with respect to their methods of analysis and investment strategies. Morningstar Investment Management's methodology also controls the investment allocations and recommendations. A client/account holder will pay advisory fees to EAG for MAS, and indirectly to ECM, if Empower Funds are included in the retirement plan investment options. The fees paid to ECM for management of the Empower Funds are included in the fund share price.

**Conflicts relating to fund recommendations:**

The Services operate by recommending or allocating a user's assets to funds available within a plan. The funds available for EAG's recommendations within a plan are generally established by the plan sponsor/client through which the Services are delivered, rather than by EAG. In some cases, the investment options may include or be comprised solely of investment options sponsored by EAG's affiliates. In other cases, the investment options may make third party payments described below. When this occurs, EAG's affiliates may receive additional compensation as a result of EAG's recommendations or allocations. These forms of additional affiliate compensation are:

- *Proprietary investment funds.* EAG's affiliates offer proprietary investment funds, and EAG may recommend or allocate your assets to our affiliates' proprietary investment funds, including proprietary mutual funds and collective investment trusts. These proprietary investment funds generate additional investment management fees to EAG's family of companies. This is because EAG's affiliates provide investment management services to the proprietary fund for services like administering, managing, and supervising these funds. For example, a plan participant using the Services will pay advisory fees to EAG and indirectly to ECM if Empower Funds are included in the retirement plan investment options, and EAG recommends an allocation to a Empower Funds product. The fees paid to ECM for management of the Empower Funds are included in the fund share price.
- *Proprietary insurance products.* EAG's parent company, EAICA, offers proprietary insurance products for investment. EAG may recommend or allocate your assets to different types of EAICA insurance products and funding agreements. The majority of EAICA insurance products are annuity contracts that are structured either as a general account product or as a separate account product. If you invest in a general account product, which is an insurance product backed by the general account of an insurance company, EAG's affiliates generate revenue by retaining spread (which is the difference between actual earnings on contracts offered by the insurer), and the crediting rate declared and guaranteed by the insurer through the contract. EAG's affiliates may also receive different types of fee income if you invest in the general account or separate account products, and other third-party payments associated with investments held in the separate account.
- *Third Party Payments.* EAG's affiliates may receive payments from other firms, non-proprietary investment funds or products, or providers, such as revenue sharing payments, in connection with the investments made pursuant to our recommendation or investment management.

**Conflicts related to increased use and promotion of the Services:**

- *Increased advisory fee income.* EAG's representatives may recommend that you use the Services. If you enroll in certain Services, EAG will earn additional compensation.
- *Increased affiliate fee income.* When you use the Services, EAG may recommend you increase contributions or utilize other savings or investment strategies. EAG's affiliates provide a bundle of recordkeeping, trust, custody, brokerage, investment, and other related services to retirement plans. If you pay for these related services through an arrangement where our affiliates charge a direct fee, EAG's affiliates may receive

additional fees for these services. These additional fees result from EAG's recommendations because you may contribute, invest, or transact in more assets with EAG's family of companies. EAG's affiliates may receive payments from other firms, non-proprietary investment funds or products, or providers, such as revenue sharing payments, in connection with the investments made pursuant to our recommendation or investment management.

- **Representative Compensation.** EAG has authorized EFSI, an affiliate of EAG, and its licensed agents and registered representatives who are Empower employees (collectively referred to as Agents) to solicit, refer and market EAG's services. In addition to their salary, Agents may earn bonus compensation based upon engaging plan sponsors to offer EAG's services. Other Agents and EAG representatives may be indirectly compensated through bonus compensation, in addition to their salary, for communication, education and/or assisting participants to enroll in EAG's Services. Compensation paid to Agents or EAG representatives does not increase the fees paid by the plan, plan sponsor or participants. The incentive compensation an EAG representative receives depends on position type, but generally is calculated based on Empower and/or EAICA profitability and the achievement of individual performance goals that may include factors unrelated to an account holder's adoption of investment products or services offered through Empower.

Agents and EAG representatives' individual performance goals and their related incentive compensation is based on a combination of factors including the number and quality of customer engagements during the measurement period and the amount of customer assets retained as result of the engagements. The rate of incentive compensation considers the total amount of retained or accumulated assets, compared with the monthly asset goal, as determined by EAG on a periodic basis. The asset goal is generally set on an annual basis and may differ by product or account type. Additional factors include certain qualitative factors, such as leadership, teamwork, client experience, quality and efficiency of client interactions, and adherence to corporate policies and regulatory standards.

#### **Other Business Activities:**

Certain senior managers and officers of EAG may also serve as executive officers of EAG's parent company, EAICA and other affiliates of EAG.

#### **Item 11 – Code of Ethics, Participation or Interest in Client Transactions and Personal Trading**

##### **EAG's Code of Ethics**

EAG has adopted a written Code of Ethics (the Code) in compliance with Rule 204A-1 of the Investment Advisers Act of 1940 (Advisers Act). The Code sets forth standards of business conduct expected of advisory personnel. It requires certain of EAG's advisory personnel to report their personal securities holdings and transactions in accordance with the Advisers Act. EAG's advisory personnel are required to comply with the Code. A copy of the Code will be provided to current or prospective clients upon request. The Code includes provisions related to:

- Fiduciary responsibility to clients;
- Compliance with federal securities laws;
- Protection and safeguarding of confidential information;
- Giving and receiving gifts, gratuities, and entertainment;
- Political contributions;
- Reporting and monitoring personal securities transactions;
- Avoiding and disclosing conflicts of interest; and
- Reporting violations of the Code.

##### **Personal Trading:**

The Code requires pre-clearance of certain securities transactions. Officers, managers, and certain employees of EAG (collectively, Access Persons) may trade for their own personal accounts in securities which are recommended to and/or purchased for EAG's advisory clients. However, because the Code would permit Access Persons to invest

in the same securities as clients in some circumstances, there is a possibility that employees could benefit from market activity by a client in a security held by an Access Person. As a result, trading is continually monitored in accordance with the Code and federal securities laws. The Code is intended to ensure that the personal securities transactions and the outside business activities of EAG's Access Persons do not interfere with making decisions in the best interest of advisory clients.

#### **Principal Trading:**

EAG has adopted a policy and practice not to engage in any principal transactions. EAG holds no investments for its own accounts which could be bought from, or sold to, an advisory client. In the event of any change in EAG's policy, any such change must be approved by management. Any principal transactions would be permitted only after meeting the review and approval requirements described under the anti-fraud section of the Advisers Act.

#### **Participation or Interest in Client Transactions:**

##### *Affiliate EFSI effects Securities Transactions for Advisory Clients*

Registered representatives of EFSI may provide wholesaling, direct sales, enrollment, and/or communication services to retirement plans and their participants for which EAG may also provide its services. In return, EFSI may receive fees from either the plan or the investment provider (fund families). All securities transactions which occur as a result of EAG's services, as described in this Brochure, are executed by EFSI. EFSI may receive compensation in the form of 12b-1 fees or other compensation from mutual fund companies or from the other investments that may be available as plan investment options. In all instances, EAG's affiliation with these entities is disclosed. Allocations in the investment options are solely determined and based on Morningstar Investment Management's software and not determinations made by EAG. The compensation paid by EAG to Morningstar Investment Management for Morningstar Investment Management's proprietary software advice program does not vary based on the allocations made or recommended by Morningstar Investment Management. Because Morningstar Investment Management is unaffiliated with EAG and EFSI, EAG does not believe there is a conflict of interest.

##### *Affiliate EAICA or ELAINY Proprietary Investments*

Investment options into which participant or accountholder assets may be allocated, pursuant to the OA or the MA services may be through a fixed and variable deferred annuity issued by EAICA or ELAINY. Because Morningstar Investment Management is unaffiliated with EAG, EAICA, ELAINY and their affiliates, EAG does not believe there is a conflict of interest. However, in all instances, EAG's affiliation with EAICA and/or EAICA's affiliates, as applicable, will be disclosed.

##### *Affiliate Empower Retirement, LLC*

Empower Retirement, LLC receives a 35 bp shareholder service fee from the applicable shares of Empower Funds for recordkeeping and administrative services provided for account holders, pursuant to a Shareholder Services Agreement between the parties.

#### **Item 12 – Brokerage Practices**

##### **Brokerage Selection; Best Execution:**

For retirement plans, the plan sponsor or its agent selects the broker-dealer used by the retirement plan and determines the reasonableness of the compensation. EAG does not select or recommend broker-dealers for stock transactions or self-directed brokerage accounts and does not determine the reasonableness of broker-dealer's compensation. Transactions recommended by Morningstar Investment Management for the Service are processed by EAG's affiliated recordkeeper, Empower, and generally executed through EFSI.

**Soft Dollar Practices:**

As a matter of policy, EAG does not utilize research or other products or services from third parties in connection with client securities transactions on a soft-dollar commission basis.

**Directed Brokerage:**

The plan sponsor may elect to offer brokerage services to participants in the retirement plan. EAG does not participate in such decisions and does not provide recommended portfolios or investment recommendations on assets held in a brokerage account under the retirement plan.

**Trade Aggregation:**

EAG does not bunch orders or engage in block trades to execute equity orders for clients. Client accounts are generally held in trust per regulatory requirements. Further, most trades are mutual funds where trade aggregation does provide any additional client benefits.

**Item 13 – Review of Accounts**

At least annually, EAG personnel review the methodologies used by Morningstar Investment Management to power the OA and MA services to ensure that they are consistent with investment advisory best practices, current technology, applicable law, and the terms of the agreement between EAG and Morningstar Investment Management.

Neither EAG nor Morningstar Investment Management review the personal financial information of participants as provided by the participants or the Plan Sponsor and do not assume responsibility for any incomplete or erroneous information. Such information, which includes date of birth, salary, gender and/or state of residence, must be reviewed periodically by the participant and/or the Plan Sponsor who in turn are responsible for notifying EAG of any changes, errors, or omissions to such information.

EAG conducts the following review of its clients' accounts:

**Online Advice:**

EAG does not conduct review of its participant's accounts in respect to investment oversight, monitoring, or rebalancing. Participants receive from EAG's investment recommendations based on the investment options provided in their specific retirement plan. **It is the responsibility of OA clients to review and update their accounts to adjust for changes in the investments they own and to determine whether the recommendations are suitable for their particular investment needs. OA clients should also review and update their accounts if significant changes occur in their personal circumstances.**

**Managed Account Service:**

Under the MA service, participant assets in the investment options are monitored, rebalanced, and reallocated on a periodic basis by EAG, based on Morningstar Investment Management's software program. On an annual basis, based on the individual's birth date, those enrolled in the MA service will receive an Annual Kit containing an account update and forecast statement. Morningstar Investment Management updates the capital market assumptions underlying their methodology used to construct the asset classes, at least annually, then makes changes to the portfolio allocations, as necessary. The portfolios are also monitored on a regular basis on current portfolio allocations and adjustments are made as necessary.

**Reporting to Clients:**

Participants enrolled in the MA service receive a MA Welcome Kit shortly after enrollment and an account update at least annually. Participants enrolled in OA can review their accounts and generate their own reports at any time. Individuals are encouraged to update significant changes to their personal information via the appropriate toll-free

customer service number. In addition, all individuals receiving Services are provided quarterly account statements generated by the plan's recordkeeper.

#### **Item 14 – Client Referrals and Other Compensation**

EAG has authorized EFSI, an affiliate of EAG, and its licensed agents and registered representatives who are Empower employees (collectively referred to as Agents) to solicit, refer and market EAG's services. EAG does not pay any compensation directly to EFSI or its Agents for the solicitation activities performed by EFSI and its Agents. The Agents receive compensation in the form of a salary and a variable bonus paid by Empower. No commissions are paid to Agents for the Services by EAG or EFSI.

Agents may earn bonus compensation based upon engaging plan sponsors to offer EAG's services. Other Agents and EAG representatives may be indirectly compensated through bonus compensation, in addition to their salary, for communication, education and/or assisting participants to enroll in EAG's Services. The incentive compensation an EAG representative receives depends on position type, but generally is calculated based on Empower and/or EAICA profitability and the achievement of individual performance goals that may include factors unrelated to an account holder's adoption of investment products or services offered through Empower.

Agents and EAG representatives' individual performance goals and their related incentive compensation is based on a combination of factors including the number and quality of customer engagements during the measurement period and the amount of customer assets retained as result of the engagements. The rate of incentive compensation considers the total amount of retained or accumulated assets, compared with the monthly asset goal, as determined by EAG on a periodic basis. The asset goal is generally set on an annual basis and may differ by product or account type. Additional factors may include certain qualitative factors, such as leadership, teamwork, client experience, quality and efficiency of client interactions, and adherence to corporate policies and regulatory standards. **Compensation paid to Agents or EAG representatives does not increase the fees paid by the plan, plan sponsor or Members.**

#### **Item 15 – Custody**

EAG does not maintain actual custody of its clients' cash, bank accounts, or securities. Pursuant to Rule 206(4)-2 of the Advisers Act as amended, EAG is deemed to have constructive custody with respect to certain client funds and securities. This is because an affiliated party is the custodian and directed or discretionary trustee of certain retirement plan accounts. In addition to annual audits, these accounts, are subject to surprise custody verifications by an independent public accountant each year, as required by Rule 206(4)-2. If applicable, EAG's clients receive periodic account statements (at least quarterly) from their custodian and should carefully review these statements. Certain clients may have assets held by unaffiliated custodians.

#### **Item 16 – Investment Discretion**

EAG provides discretionary investment management services for those plan participants who enroll and participate in the MA service; EAG does not offer or engage in discretionary investment services for OA.

The MA service is a professional, flexible asset management program that utilizes data from the methodologies and proprietary software program developed and employed by its IFE, Morningstar Investment Management. To provide the MA service to plan participants, EAG retains discretionary authority over the allocation of available investment options without requiring prior approval of each transaction. All ongoing investment transfers and investment direction changes are implemented for plan participants enrolled in the Managed Account service.

#### **Item 17 – Voting Client Securities**

EAG does not assume the responsibility to aid or vote proxies or other issuer communications regarding your Account, or to exercise voting or other decision-making authority regarding proxies or other issuer communications. Correspondence regarding the matters described in this section will be handled in connection with the Plan's policies and service provider arrangements.

EAG, as a registered investment adviser, and as a matter of practice, does not accept authority to vote client securities in connection with any of the services described in this Brochure. Correspondence regarding the matters described in this section will be handled in connection with the Plan's policies and service provider arrangements.

**Item 18 – Financial Information**

As previously discussed, under certain circumstances EAG has discretionary authority over certain client funds and securities. Accordingly, EAG is required to disclose information about its financial condition that is reasonably likely to impair its ability to meet contractual commitments to its clients. EAG has no financial commitment that impairs its ability to meet contractual commitments to its clients, nor has EAG been the subject of a bankruptcy proceeding. Further, EAG does not require or solicit prepayment of fees in excess of \$1,200 per client more than six months in advance.

## **GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY**

A Stock Company

8515 East Orchard Road, Greenwood Village, CO 80111

*For inquiries, information or resolution of complaint, call 1-877-694-4015*


### **Group Unallocated Fixed Deferred Annuity Contract** **("Contract")** *Non-Participating*

PLAN SPONSOR	<b>City of Allegan, MI</b>
CONTRACTHOLDER	<b>City of Allegan, MI and the Trustee/s of the City of Allegan 457 Plan as identified on the Group Annuity Contract Application</b>
PLAN	<b>City of Allegan 457 Plan</b>
CONTRACT NUMBER	<b>100385-01</b>
CONTRACT DATE	August 22, 2023 or the later of the dates signed by all parties.

Great-West Life & Annuity Insurance Company ("Great-West") agrees to pay annuity benefits provided by this Contract, subject to its terms and conditions. The provisions on the following pages, together with the application for this Contract, and other documents referenced in Section 10.2, are part of this Contract.

Signed for Great-West Life & Annuity Insurance Company and effective on the Contract Date.

  
Secretary

  
President

This Contract is a legal contract between Contractholder, Plan Sponsor and Great-West Life & Annuity Insurance Company. PLEASE READ THIS CONTRACT CAREFULLY.



## TABLE OF CONTENTS

<b>SECTION 1. DEFINITIONS .....</b>	<b>4</b>
<b>SECTION 2. OWNERSHIP PROVISIONS .....</b>	<b>6</b>
2.1 Ownership of the Contract .....	6
2.2 Transfer and Assignment .....	6
2.3 Trust .....	6
<b>SECTION 3. CONTRACTUAL ACCOUNT VALUE .....</b>	<b>7</b>
3.1 Contractual Account Value .....	7
3.2 Transaction Date .....	7
<b>SECTION 4. CONTRIBUTIONS AND DEPOSITS .....</b>	<b>8</b>
4.1 Contributions .....	8
4.2 Limitations on Salary Reduction Contributions .....	8
4.3 Deposits .....	8
4.4 Allocation of Contributions and Deposits .....	8
<b>SECTION 5. CONTRACT CHARGES AND FEES .....</b>	<b>9</b>
5.1 Contract Termination Charge .....	9
5.2 Service Charges and Fees .....	9
5.3 Contract Series Charge .....	9
5.4 Payment of Charges and Fees .....	9
<b>SECTION 6. PARTICIPANT-, ALTERNATE PAYEE-, AND BENEFICIARY-DIRECTED TRANSFERS AMONG INVESTMENT OPTIONS OFFERED BY THE PLAN .....</b>	<b>10</b>
<b>SECTION 7. PAYMENTS TO PLAN SPONSOR FOR DISTRIBUTIONS .....</b>	<b>11</b>
7.1 Distribution Requirements .....	11
<b>SECTION 8. BENEFIT PAYMENT OPTIONS .....</b>	<b>12</b>
8.1 Plan Sponsor Requests for Distributions for Participants, Beneficiaries or Alternate Payees .....	12
8.2 Conditions of Payment .....	12
8.3 Lump Sum Payment Option .....	12
8.4 Periodic Payment Options .....	12
8.5 Annuity Payment Options .....	12
8.6 Election of Annuity Options .....	13
8.7 Misstatement of Age .....	13
8.8 Great-West's Liability .....	13
<b>SECTION 9. CONTRACT TERMINATION .....</b>	<b>15</b>
9.1 Notice of Contract Termination and Selection of Termination Option(s) .....	15
9.2 Contract Termination Provisions .....	15
9.3 Contract Termination due to Plan Termination .....	15
<b>SECTION 10. GENERAL PROVISIONS .....</b>	<b>16</b>
10.1 Contract .....	16
10.2 Entire Contract .....	16
10.3 Contract Modification .....	16
10.4 Modification of Fixed Account Options .....	16
10.5 Restorations .....	17
10.6 Plan Provisions .....	17
10.7 Non-Participating .....	17
10.8 Currency and Contributions and Deposits .....	17
10.9 Notices .....	17
10.10 Disclaimer .....	17

10.11 Representations..... 17

10.12 Non-Waiver..... 17

10.13 Information..... 18

## SECTION 1. DEFINITIONS

---

**Administrative Offices** – 8515 East Orchard Road, Greenwood Village, CO 80111.

**Alternate Payee(s)** – any spouse, former spouse, child or other dependent of a Participant or any other person recognized under applicable law or Court Order as having a right to receive all or a portion of the benefit payable under a Plan with respect to such Participant.

**Annuitant** – the person for whom an annuity is purchased, and upon whose life the payment of the annuity is based.

**Annuity Commencement Date** – the date on which annuity payments begin.

**Applicable Tax** – the amount of tax charged by a state or other governmental authority.

**Beneficiary(ies)** – a person or entity designated by the Participant or under the terms of the Plan to receive all or a portion of the amount in the Contractual Account attributable to a Participant upon his or her death.

**Business Day** – any day and during the hours on which the New York Stock Exchange is open for trading. Except as otherwise provided in this Contract, in the event that a date falls on a non-Business Day, the date of the succeeding Business Day will be used.

**Code** – the Internal Revenue Code of 1986, as amended, and all related laws and regulations which are in effect during the term of the Contract.

**Contract Date** – the effective date of this Contract listed on the first page of this Contract.

**Contractholder** – The entity referenced on the cover page of this Contract that holds this Contract. For certain plans, the Contractholder also may be the Plan Sponsor.

**Contractual Account** – The Plan's aggregate amount in the Fixed Account(s).

**Contractual Account Value** – The sum of all amounts credited to the Contractual Account, less the sum of all amounts withdrawn from that account, reflecting amounts in the Fixed Account(s).

**Contributions** – salary reduction contributions, Participant after-tax contributions, employer contributions, or other contributions made by the Plan Sponsor to the Plan on behalf of a Participant under the Code.

**Court Order** – An order of a court of competent jurisdiction, such as a qualified domestic relations order that: (i) creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Plan Participant; (ii) complies with applicable requirements of the Code and/or ERISA; and (iii) is approved by the Plan Sponsor or its designee.

**Deposits** – to the extent permitted under the Plan type, Participant initiated rollovers, plan to Plan transfers, Transfers, or other amounts, other than Contributions.

**Distributions** – amounts paid to the Contractholder on behalf of a Participant, Beneficiary or Alternate Payee, pursuant to the terms of the Plan and the Code.

**ERISA** – Employee Retirement Income Security Act of 1974, as amended.

**Fixed Account** – an investment option, the assets of which are part of the General Account of Great-West.

**Fixed Account Value** – the sum of the amounts in the Fixed Account(s).

**General Account** – Great-West's assets other than those held in any segregated investment account.

**Good Order** – A notice or instruction from a person authorized to initiate a transaction that is received by Great-West at our Administrative Offices, utilizing such forms as we may require, and that contains all information, documentation, and instructions necessary for Great-West to process such transaction.

**Great-West (we, us, our)** – Great-West Life & Annuity Insurance Company, located at the Administrative Offices at the address shown under this Section 1.

**Participant** – an individual eligible to participate in the Plan.

**Payee** – a person entitled to receive all or a portion of the value of the Participant's interest in the Contractual Account.

**Plan** – A retirement program that an employer offers to its employees that is funded in part by this Contract. Each Plan must meet the applicable requirements of Code §401(a) or §457(b), as applicable.

**Plan Sponsor** – an entity maintaining the Plan on behalf of Participants, Alternate Payees and Beneficiaries. In a multiple employer plan, the Plan Sponsor shall be considered the entity maintaining the multiple employer plan on behalf of participating employers and the participating employers Participants, Alternate Payees and Beneficiaries. If the Plan is intended to qualify under Code §457(b), the Plan Sponsor must be an eligible employer described in Code §457(e)(1)(A).

**Request(s)** – inquiry or instruction that is/are: (1) received by Great-West at its Administrative Offices in Good Order; and (2) submitted in accordance with the provisions of this Contract, or as required by Great-West. The Request is subject to any action taken by Great-West before the Request was processed.

**Start-Up Costs** – the amounts incurred by Great-West in acquiring and implementing the Plan, which may include but are not limited to restorations, commissions or other costs, if applicable.

**Transfer(s)** – the reinvestment or exchange by the designated Plan recordkeeper of all or a portion of the Participant's interest from one investment option or provider under the Plan to another.

## **SECTION 2. OWNERSHIP PROVISIONS**

---

### 2.1 Ownership of the Contract

Contractholder is the owner of the Contract and is identified on the first page of the Contract. The Plan Sponsor and the Contractholder have certain rights, responsibilities and privileges as set forth under this Contract. For certain Plan types, the Contractholder also may be the Plan Sponsor. Please see applicable tax endorsement attached to this Contract, which endorsement pertains to your specific type of Plan.

### 2.2 Transfer and Assignment

The interests of the Contractholder and the Plan Sponsor under this Contract are nontransferable and may not be waived, relinquished or assigned, sold, pledged, charged, encumbered, or in any way alienated, except as may be permitted under the Code, by law, or by applicable Court Order. If, however, the Plan is consolidated or merged with another retirement plan, or if the assets and liabilities of the Plan are transferred to another retirement plan or are acquired by another plan sponsor, this Contract may be assigned to the new plan sponsor and/or trustee.

### 2.3 Trust

The Contract may be used in lieu of a trust agreement for purposes of satisfying Code sections 401(a), 401(f) and 457(g) and no portion of the amount contributed to the Contract, plus earnings thereon, may be used for or diverted to any purpose other than the exclusive benefit of Participants and their Beneficiaries prior to the satisfaction of all liabilities to them.

## **SECTION 3. CONTRACTUAL ACCOUNT VALUE**

---

### **3.1 Contractual Account Value**

The Contractual Account Value is calculated as follows:

- (a) all Contributions and Deposits to the Fixed Account option selected, made for or on behalf of Participant(s), Alternate Payee(s) and Beneficiary(ies); plus
- (b) all interest credited to the Contractholder's assets in such Fixed Account in accordance with the applicable Fixed Account rider; less
- (c) any amounts transferred or distributed from the Fixed Account; less
- (d) any applicable charges, fees and Applicable Tax, if any.

### **3.2 Transaction Date**

All Requests, Contributions and Deposits received in Good Order with all required documentation at Great-West's Administrative Offices prior to the close of business of the New York Stock Exchange will be processed as of the date received, and if received after the close of business of the New York Stock Exchange will be processed on the next Business Day. However, Great-West shall not be liable for the results of any delay or interruption in processing transaction Requests or Contributions or performing required acts hereunder due to extreme unforeseeable and unpreventable circumstances or causes or conditions beyond its control, such as power failure, fire, extreme flooding, earthquake, tsunami, mudslides, hurricane, tornado, blizzard, cyber-attack or disruptions in orderly trading on any relevant exchange or market, including disruptions due to extraordinary market volume that result in substantial delay in receipt of correct data.

## **SECTION 4. CONTRIBUTIONS AND DEPOSITS**

---

### 4.1 Contributions

Prior to the termination of the Contract and unless otherwise described in a Fixed Account rider, Contributions may be made at any time on behalf of Participants, pursuant to the terms of the Plan.

The Contribution amounts will be allocated to the Fixed Account in accordance with instructions from the Plan Sponsor pursuant to the accompanying Contribution report. The Contribution report must be submitted in a manner acceptable to Great-West and shall be conclusive and final. When the Contribution report does not coincide with the Contribution received and the inconsistency is not resolved within a period of time required under the law, Great-West may return the Contribution.

### 4.2 Limitations on Salary Reduction Contributions

For limitations on salary reduction Contributions, if any, please see the applicable tax endorsement for your specific type of Plan, attached to this Contract.

### 4.3 Deposits

Deposits made directly to Great-West by Plan Sponsor will be accepted and assumed permitted under the terms of the Plan and applicable Code requirements.

### 4.4 Allocation of Contributions and Deposits

Contributions and Deposits, less Applicable Tax, if any, will be allocated when received by Great-West at its Administrative Offices, subject to Section 3.2 of this Contract.

If a selected Fixed Account option is changed or will no longer be made available, then Contributions and Deposits may be redirected to another available Fixed Account option and the account balance may be reallocated subject to the terms of the account selected. Great-West will provide notice of any such changes in accordance with Section 10.4.

## **SECTION 5. CONTRACT CHARGES AND FEES**

---

### 5.1 Contract Termination Charge

Upon termination of the Contract by Plan Sponsor, a Contract termination charge *may* apply, as set forth in the Specification Page.

### 5.2 Service Charges and Fees

Great-West and Plan Sponsor may enter into agreements for other services to the Plan not otherwise provided under this Contract. Charges and fees, if applicable, for these services will be described in such separate agreement(s).

### 5.3 Contract Series Charge

The Contract series charge, if any, for the Fixed Account rider, shall be set forth in the Fixed Account rider selected by the Plan Sponsor or authorized Plan fiduciary.

### 5.4 Payment of Charges and Fees

Any charges and fees imposed under this Contract may be billed directly to Plan Sponsor. If Plan Sponsor does not elect to have such charges and fees billed to Plan Sponsor, such charges and fees shall be deducted from the Contractual Account Value.

In all instances where Plan Sponsor has elected to be billed for any fees and charges and any of the fees or charges are unpaid after the date billed, as disclosed in and pursuant to the procedures in the fee disclosure and/or service agreement for the Plan, Plan Sponsor and Contractholder hereby instruct Great-West to debit the Contractual Account. Great-West may continue to deduct charges and fees quarterly from the Contractual Account Value unless and until Plan Sponsor provides Great-West with written instructions to reinitiate billing.

Great-West may change any charges and fees upon not fewer than thirty (30) calendar days advance written notice to Plan Sponsor.



## **SECTION 6. PARTICIPANT-, ALTERNATE PAYEE-, AND BENEFICIARY-DIRECTED TRANSFERS AMONG INVESTMENT OPTIONS OFFERED BY THE PLAN**

---

Upon receipt of a Request by Plan Sponsor or its designee made on behalf of Participants, Alternate Payees or Beneficiaries, meeting all of the requirements of this section, Great-West will process Transfers. Transfers must:

- (a) satisfy the terms of the Plan in accordance with the appropriate provisions of the Code; and
- (b) satisfy any restrictions in the attached Fixed Account rider.

## **SECTION 7. PAYMENTS TO PLAN SPONSOR FOR DISTRIBUTIONS**

---

### 7.1 Distribution Requirements

Notwithstanding any provision herein to the contrary, payments made to the Plan Sponsor or its designee for Distributions to a Payee, or Plan to Plan transfers, may only be made in accordance with the terms of the Plan and applicable Code sections and any terms of the Fixed Account rider(s). Great-West shall be entitled to rely solely on information provided by Plan Sponsor or its designee as to compliance with all applicable law and the terms of this Contract, any attached tax endorsement and any applicable Fixed Account rider(s) for such Distributions.

## **SECTION 8. BENEFIT PAYMENT OPTIONS**

---

### **8.1 Plan Sponsor Requests for Distributions for Participants, Beneficiaries or Alternate Payees**

The Plan Sponsor may elect to provide Distributions by directing Great-West to withdraw from the Contractual Account Value the amounts necessary to provide such benefits, subject to this Section 8. As long as the Contractual Account Value is greater than zero and as allowed by the Plan and Code, a Request may be made by the Plan Sponsor on behalf of a Payee to:

- (a) Elect an annuity payment option, provided such Request is made at least thirty (30) calendar days before the Annuity Commencement Date;
- (b) Elect a lump sum payment option and designate the date of payment.

### **8.2 Conditions of Payment**

Approved Distributions shall be effective on the later of: (a) the date elected subject to any restrictions of the Plan and Code and the applicable Fixed Account rider(s); and (b) the date of the Request.

### **8.3 Lump Sum Payment Option**

If the Plan Sponsor determines that the Payee is entitled to a Distribution under the applicable terms and provisions of the Plan and the Code sections governing the Plan, the Plan Sponsor or its designee may direct us to withdraw from the Contractual Account a lump sum payment amount as selected by the Payee.

Subject to the provisions of the attached Fixed Account rider(s), the amount to be distributed is: (i) the lump sum amount requested; less (ii) the Applicable Tax, if any, as of the date of the amount distributed, and (iii) any applicable fees and charges.

### **8.4 Periodic Payment Options**

If, based upon information provided by Plan Sponsor, the Payee is entitled to a Distribution under the applicable terms and provisions of the Plan and the Code sections governing the Plan, all or a portion of a Participant's interest in the Contractual Account may be applied to a periodic payment option selected by the Payee, subject to any restrictions in a Fixed Account rider. Charges and fees will continue to apply. An Applicable Tax, if any, may apply. Plan Sponsor will provide Great-West with any Requests for periodic payments by Participants and shall instruct its designated Plan recordkeeper to administer such payments.

Plan Sponsor shall provide Great-West notice in Good Order upon the death of any Participant who is receiving periodic payments and of the deceased Participant's Beneficiary's election of a payment option under this Section 8 meeting all the requirements of Code section 401(a)(9).

### **8.5 Annuity Payment Options**

If, based upon information provided by Plan Sponsor, the Payee is entitled to a Distribution under the applicable terms and provisions of the Plan and the Code sections governing the Plan, all or a portion of the interest in the Contractual Account attributable to the Participant may be applied to an annuity payment option selected by the Payee, so long as the requirements of Code section 401(a)(9) are met. Thereafter, this Contract shall no longer be applicable with respect to amounts directed to the annuity payment option. Great-West will issue an 'individual retired life certificate' to each Annuitant describing the rights and benefits payable under the elected annuity payment option provided to the Participant/Payee under this Contract.

The amount to be applied to an annuity payment option is: (i) the portion of the interest in the Contractual Account attributable to the Participant elected by Payee subject to any applicable

restrictions in the Fixed Account rider, less (ii) Applicable Tax, less (iii) any fees and charges described in this Contract.

The minimum amount that may be applied under the elected annuity option for any Payee is \$5,000. If any payments to be made under the elected annuity payment option will be less than \$50, Great-West may make the payments in the most frequent interval that produces a payment of at least \$50.

#### 8.6 Election of Annuity Options

In order to elect, or change the election of, an annuity payment option, Great-West must receive the Request at least thirty (30) calendar days before the Annuity Commencement Date.

To the extent available under the Plan, the available annuity payment options are:

- Period Certain Annuity
- Single Life Only Annuity
- Single Life Only Annuity with Period Certain
- Single Life Only Annuity with Cash Refund
- Single Life Only Annuity with Installment Refund
- Joint and Survivor Annuity
- Joint and Survivor Annuity with Period Certain
- Subject to regulatory approval and the terms of the Plan, any other form of annuity offered by Great-West.

Annuities will be purchased using Great-West's current purchase rates for contracts of this class at the time the annuity is purchased. These rates will be at least as favorable to the Annuitant as an annuity purchased with rates based on the following actuarial assumptions:

- Interest Rate Assumption: 1.00%
- Mortality Assumption: 2012 IAM Basic Female mortality table with Projection Scale G2 improvement factors applied; Static improvement from year of table (2012) to year of the annuity election, generational improvement thereafter
- Loading: 5.00%

Great-West will review this guaranteed actuarial basis annually and may change it by providing at least ninety (90) calendar days' advance written notice to the Plan Sponsor. However unless Great-West and Plan Sponsor otherwise agree in writing, Great-West will only change the guaranteed actuarial basis once in any sixty (60) month period, in which case the actuarial basis will be at least as favorable as the actuarial basis Great-West offers to any other contractholder in the same class as this Contract at the time of such change.

#### 8.7 Misstatement of Age

Great-West may require the Payee or the Contractholder on behalf of a Payee to provide to Great-West adequate proof of the age and death of any Payee before processing a Request for or making any payment. Generally, adequate proof consists of a state-issued driver's license, birth certificate or death certificate, as applicable. Additionally, for life contingent annuity options, Great-West may require evidence of survival of any Annuitant periodically on or after the Annuity Commencement Date. If the age of the Payee has been misstated, the payments established for him/her under the applicable payment option will be made on the basis of his/her correct age, the correct facts will be used to adjust payments.

If payments made pursuant to an annuity payment option were too large because of a misstatement of age, Great-West may deduct the difference from the next payment or payments. If payments were too small, Great-West may add the difference to the next payment.

#### 8.8 Great-West's Liability

Great-West's liability is for the payment of requested benefits to Participants, including the provision of annuity benefits, as directed by the Contractholder, as set forth in Section 8.5 and 8.6 hereof, on the basis of making correct withdrawals in accordance with the terms of the Contract.

## **SECTION 9. CONTRACT TERMINATION**

---

### 9.1 Notice of Contract Termination and Selection of Termination Option(s)

Either Great-West or Plan Sponsor may terminate this Contract with advance written notice to the other party or parties. The Contract termination date shall be the seventy-fifth (75<sup>th</sup>) calendar day after the date written notice is received in the Administrative Offices in Good Order. If the seventy-fifth (75<sup>th</sup>) day is not a Business Day, the Contract termination date shall be the Business Day immediately following the seventy-fifth (75<sup>th</sup>) day. Prior to the Contract termination date, Great-West and Plan Sponsor may agree to an alternate Contract termination date. Contract termination may not occur on the date selected by Plan Sponsor unless Great-West has received all required information.

### 9.2 Contract Termination Provisions

In the event this Contract is terminated, Great-West will pay the Contractual Account Value as described below.

Great-West will remit the Fixed Account Value in accordance with the applicable Fixed Account rider.

Plan Sponsor and Contractholder hereby instruct Great-West to deduct any outstanding charges and fees, including the Contract termination charge, if applicable, due to Great-West from the amount remitted from the Fixed Account.

### 9.3 Contract Termination due to Plan Termination

If Plan Sponsor terminates the Plan, it shall notify Great-West of such Plan termination and that final Contributions have been remitted to Great-West. Upon notice of Contract termination due to Plan termination, Plan Sponsor agrees to provide any and all information and instructions Great-West requires to properly comply with Plan Sponsor's notification of Plan termination.

Plan Sponsor acknowledges that the amount distributed from the Contract upon Plan termination will be equal to the Contractual Account balance and subject to the provisions in the applicable Fixed Account rider, less all outstanding charges or fees and any applicable Contract termination charge due upon Distribution.

Plan Sponsor shall file any and all required Forms 5500.

If the Plan is abandoned, orphaned or if Plan Sponsor cannot be located or Plan Sponsor fails to provide appropriate representations and instructions to Great-West in connection with termination of the Plan, Great-West is authorized to accept notices, representations and instructions from the Plan administrator or trustee, the bankruptcy trustee for Plan Sponsor, the U.S. Department of Labor, if applicable, or an authorized and appropriate representative of Plan Sponsor. Great-West may also utilize any procedures promulgated by the U.S. Department of Labor, if applicable, or other applicable regulatory agencies for abandoned or orphaned plans including the facilitation of Distributions to Payees performed by a Qualified Termination Administrator, as that term is defined under Federal law and regulations promulgated thereunder, or comparable person as allowed by applicable law.

Once Great-West has distributed all Plan assets in accordance with the terms of the Contract and the Fixed Account rider(s), Great-West is discharged of all its obligations with respect to the Contractual Account and this Contract.

The Contract shall terminate once all Plan assets have been distributed.

## **SECTION 10. GENERAL PROVISIONS**

---

### 10.1 Contract

Great-West has issued this Contract to Plan Sponsor and Contractholder in consideration of the application and payment of the initial Contributions or Deposits.

This Contract is subject to the laws of the state in which it was issued. Great-West reserves the right to interpret provisions of this Contract accordingly, and to amend this Contract as necessary to maintain compliance with applicable state and federal law and regulations.

### 10.2 Entire Contract

This Contract, including the application, tax endorsement(s), specification page, and Fixed Account or other rider(s)/endorsement(s) (*subject to regulatory approval*), if any, constitute the entire contract between Plan Sponsor, Contractholder and Great-West.

### 10.3 Contract Modification

Great-West may modify this Contract from time to time to conform it to changes in tax or other law, including applicable regulations and rulings, without consent of Plan Sponsor, Contractholder, or any other person. Great-West will provide notice and a copy of any such modification to Plan Sponsor and Contractholder as soon as reasonably practicable. Only the President, Vice-President, or the Secretary of Great-West, or their authorized designees, can agree on behalf of Great-West to modify any provisions of the Contract.

Plan Sponsor and Great-West, with the acknowledgment of Contractholder, may, by written agreement or amendment, make other modifications to this Contract, subject to the approval of the appropriate state department of insurance, if applicable. No such modification will, without the written consent of Plan Sponsor, affect the terms, provisions, or conditions of this Contract, which are or may be applicable to Contributions or Deposits made prior to the date of such modification.

### 10.4 Modification of Fixed Account Options

Great-West may offer new or cease offering existing Fixed Account options, or make other changes to the Fixed Account options as Great-West deems necessary, and subject to the approval of the state insurance department, if applicable. If Great-West changes material provisions of its Fixed Account option(s), Great-West will provide at least sixty (60) calendar days' written notice to the Plan Sponsor. This notice shall explain any Fixed Account change(s), communicate the timeline and effective date of any Fixed Account change and explain Plan Sponsor's right to opt out of any Fixed Account change. Plan Sponsor's absence of an objection to such notice will be considered consent to the change(s).

If Great-West replaces a Fixed Account option and does not receive an objection from the Plan Sponsor, Transfers between account options as disclosed in the notice will be completed by Great-West as of the effective date of the change. Such allocation will be in effect until such time as Great-West receives a written Request for a different allocation.

If Plan Sponsor provides written objection to Great-West within the sixty (60) calendar day notice period, Great-West will not make the Fixed Account change at issue. If Plan Sponsor objects to the Fixed Account change, Great-West may terminate this Contract by providing written notice pursuant to Section 9.1 of this Contract.

### 10.5 Restorations

Great-West may agree to restore any back-end load charges, or other charges deducted from Plan assets. Great-West recovers restoration amounts, if applicable, at Contract termination through the Contract termination charge.

### 10.6 Plan Provisions

In all cases, the Plan document shall determine (subject to the Code) the specific features of the Plan, which may include the availability of certain types of investment options, Distributions, loans, and other features allowed but not mandated by the Code. Any provision of this Contract which deals with a feature not included in the Plan shall be ineffective.

### 10.7 Non-Participating

This Contract is Non-Participating, meaning that it is not eligible to share in Great-West's divisible surplus.

### 10.8 Currency and Contributions and Deposits

All amounts to be paid to or by Great-West must be in currency of the United States of America. All Contributions and Deposits to this Contract must be made payable to Great-West or to a designee acceptable to Great-West.

### 10.9 Notices

Great-West may provide any notice or demand to Plan Sponsor, Contractholder, Payee, or other person, by either sending it to such person's last known address, email address, or facsimile number on file with Great-West, or by posting it to an electronic network or website so long as a separate email notice is sent to the email address on file with Great-West.

An application, report, Request, election, direction, notice or demand by Plan Sponsor or a Payee/Annuitant must be made in Good Order. When Great-West requires it, Plan Sponsor will obtain the signature of the Payee on forms provided by Great-West. Great-West must first approve any written materials describing this Contract that are developed by any other person.

### 10.10 Disclaimer

Nothing contained in this Contract shall be construed to be tax, investment or legal advice, and Great-West assumes no responsibility or liability for any costs, including but not limited to taxes, penalties or interest incurred by the Plan, Plan Sponsor or any other Payee arising out of a determination of liability. Great-West shall not be held liable for any third party's negligence, willful misconduct, or failure to perform.

### 10.11 Representations

Great-West shall be entitled to rely and act solely on the reports, directions, proofs, notices, elections, and other information furnished to it by Contractholder, Plan Sponsor, or their designee(s), and such acts shall be conclusive and final.

### 10.12 Non-Waiver

Great-West may elect not to exercise a right, privilege, or option under this Contract. Such election shall not constitute a waiver of the right to exercise such right, privilege, or option at any subsequent time, nor shall it constitute a waiver of any provision of this Contract.



#### 10.13 Information

Plan Sponsor shall furnish all information that Great-West may reasonably require for the administration of this Contract. Great-West shall not be responsible for any obligation under this Contract until it receives all requested information in Good Order.

# **GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY**

A Stock Company

## **ENDORSEMENT for SECTION 457(b) Governmental Plans**

### **Attached to and forming a part of the Unallocated Group Annuity Contract ("Contract")**

*This Endorsement is a part of the Great-West Life & Annuity Insurance Company ("Great-West")  
Contract to which it is attached.*

*Terms defined in the Contract have the same meaning where used in this Endorsement.*

This Endorsement forms a part of the Contract to which it is attached and addresses certain requirements under the Internal Revenue Code of 1986, as amended (the "Code"). The following provisions apply to Contracts issued under plans intended to satisfy the requirements of Section 457(b) of the Code ("Plan" or "Plans") which are established and maintained by a governmental employer within the meaning of Section 457(b)(e)(1)(A) ("Governmental Employer").

The effective date of this Endorsement is the issue date of the Contract or such later date necessary to maintain the status of the Plan under Section 457(b) of the Code.

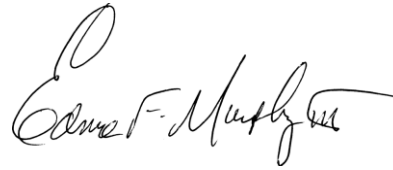
If there is a conflict between the terms of this Endorsement and the terms of the Contract or riders thereto, the terms of this Endorsement will control. The Contract may, however, contain further restrictions, including but not limited to the number and frequency of Contributions which will be accepted, which will continue to apply to the extent consistent with Federal tax law.

All capitalized terms in this Endorsement shall have the same meaning as attributed to them in the Contract.

1. Any Annuitant under this Contract will be a Participant or Beneficiary of the Plan. The Contractholder will be the owner of the Contract under the Plan.
2. The Contract shall be subject to the provisions, terms and conditions of the Plan, and any payment, distribution or transfer under this Contract shall comply with the provisions, terms and conditions under the Plan as determined by the Governmental Employer (or its authorized designee) who established the Plan. We shall have no responsibility with respect to the provisions, terms and conditions of the Plan, including but not limited to determining whether any payment, distribution or transfer complies with the provisions, terms and conditions of the Plan or with Applicable Law, or in administration of the Plan. Further, the terms of the Plan cannot expand the terms of the Contract or impose responsibilities or duties on Great-West not specifically set forth in the Contract.
3. To maintain eligibility under Code section 457(b), the Plan must continue to hold Plan assets in trust.
4. The Contractholder shall hold all Plan assets hereunder for the exclusive benefit of Plan Participants and Beneficiaries and no portion of Contributions or earnings thereon may be used for or diverted to any other purpose other than for the exclusive benefit of such persons prior to the satisfaction of all liabilities with respect to such persons.

5. A Plan Participant or Beneficiary may request Plan Sponsor to direct us to have any portion of an eligible rollover distribution (within the meaning of Section 402(c)(4) of the Code) paid directly to an eligible retirement plan described in Section 402(c)(8)(B) of the Code by means of a direct transfer or direct rollover under Section 401(a)(31) of the Code.
6. Distributions under the Contract and any annuities purchased under the Contract shall meet the requirements of Section 72(s) of the Code, as applicable.

Signed for Great-West Life & Annuity Insurance Company on the Effective Date of the Contract.

A handwritten signature in black ink, appearing to read "Edmund F. Murphy". The signature is fluid and cursive, with a large initial "E" and a long horizontal stroke at the end.

President

# GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

A Stock Company

## Great-West Investments Fixed Account – Series I FIXED ACCOUNT RIDER

*This Great-West Investments Fixed Account – Series I rider (the “Rider”) is part of the Great-West Life & Annuity Insurance Company (“Great-West”) Contract to which it is attached. Terms defined in the Contract have the same meaning where used in this Rider.*

The Great-West Investments Fixed Account – Series I (“Fixed Account”) is a Fixed Account that is part of the General Account of Great-West. All or a portion of the Contributions and Deposits may be allocated to the Fixed Account.

### **Definitions**

A **Competing Fund** is any of the following types of funds offered by the Plan Sponsor:

- (a) any stable value fund; or
- (b) any fund with a known or periodically declared rate of interest; or
- (c) any money market fund; or
- (d) any bond fund with a duration of 3 years or less; or
- (e) any investment option at any time under a Plan that, unless otherwise agreed by Great-West, is a balanced fund that seeks to maintain 75% or more of its assets invested in investment grade U.S. fixed income assets that have a stated benchmark of less than three (3) year or long term objective of maintaining a duration of less than three (3) years; or is a fund that has investment characteristics substantially similar or identical to a stable value fund; or is a fund that Great-West, in accordance with its underwriting standards, has determined to be a Competing Fund.

**Contractual Account Value** – For the purposes of this Rider only, the book value of the Fixed Account.

**Plan Sponsor Initiated Event (“PSIE”)** – Plan Sponsor action that leads to a transfer of Plan assets from the Fixed Account, including but not limited to, spin-off, layoff, sale, merger, terminating union in a multi-employer plan; terminating participating employer in a multiple employer plan; termination by a political subdivision, agency, or instrumentality of a governmental plan.

### **Credited Interest Rate**

Interest earned on the amounts invested in the Fixed Account is compounded daily at the declared credited interest rate. At the end of each calendar quarter, Great-West will establish and declare the interest rate to be credited to the Plan’s assets held in the Fixed Account during the next calendar quarter. Great-West will reset the interest rate quarterly and declare all reset credited interest rates at least 48 hours in advance of each reset.

### **Guaranteed Minimum Interest Rate**

The guaranteed minimum interest rate will be equal to 0.00%.

### **Contract Series Charge**

Great-West will accrue a charge to cover expenses, which as of the Contract Date, includes an amount for Contract administration, investment management, and various recordkeeping and other services that are provided to the Plan pursuant to a separate agreement with the Plan (which may include

services provided by one of Great-West's affiliates or subsidiaries). The accrual will be an amount determined by applying an effective annual Contract series charge rate of 0.35%.

In addition to the annual Contract series charge outlined above, there may be an adjustment to the credited interest rate which is used to reduce the amount for Plan recordkeeping/administration services that would otherwise be charged to the Plan, to the extent permissible under the Employee Retirement Income Security Act of 1974 (ERISA), as amended.

### **Limitations**

Great-West shall defer processing Distribution or Transfer Requests if transactions cannot be executed or settled due to the closing or disruption of financial markets or exchanges. Great-West shall resume the processing of Distributions and Transfers once the disruption is resolved.

Plan Sponsor shall not offer Competing Funds unless mutually agreed upon by Great-West and Plan Sponsor, in which case amounts withdrawn from the Fixed Account must be transferred to a non-competing fund and remain there for at least ninety (90) days before transferring to a Competing Fund.

Should the Plan Sponsor offer a Competing Fund without Great-West's agreement or should an existing Plan investment become a Competing Fund that is available to the Plan without Great-West's prior agreement, Great-West shall suspend all Transfers out of the Fixed Account upon at least thirty (30) calendar days advance written notice to the Plan Sponsor, which notice Plan Sponsor shall communicate promptly to the Participants, Alternate Payees and Beneficiaries invested in the Fixed Account. This Transfer restriction shall remain until the Competing Fund is removed as an eligible Plan investment option, or as otherwise mutually agreed.

### **Excessive Trading**

In order to discourage Transfer activities that are disruptive to the operation of the Great-West General Account, Plan Sponsor shall, or shall direct its designated Plan recordkeeper to track Participant, Alternate Payee, and Beneficiary initiated Transfers to identify a purchase into and sale out of the Fixed Account within a thirty (30) calendar day period of time (a "Round Trip").

If a Participant, Alternate Payee, or Beneficiary completes a second Round Trip within thirty (30) calendar days of completing the first Round Trip, Plan Sponsor shall, or shall direct its designated Plan recordkeeper to restrict such person from making a Transfer into or out of the Fixed Account for up to thirty (30) calendar days starting on the date the second Round Trip is completed (the "Transfer Restriction Period").

Contributions and Deposits, other than Transfers, will be allowed into the Fixed Account during the Transfer Restriction Period.

### **Transfers**

Unless otherwise provided in this Rider, Participant, Alternate Payee, and Beneficiary initiated Transfers of amounts held in the Fixed Account are permitted at any time.

### **Fixed Account Value**

The Plan's value in the Fixed Account is determined as the value of (a) minus (b) where:

- (a) is the sum of all Fixed Account Contributions and Deposits plus interest credited to the Fixed Account; and
- (b) is the sum of:
  - i. any amounts distributed;
  - ii. any Transfers from the Fixed Account;
  - iii. any applicable fees and charges; and

- iv. any Applicable Tax.

### **Plan Sponsor Initiated Events ("PSIE")**

Plan Sponsor shall provide notification to Great-West, in writing, at least thirty (30) calendar days in advance of a PSIE.

Upon receipt of the written notification date, if the book value of the amount associated with the PSIE ("PSIE Fixed Account book value") is less than or equal to the de minimis amount as disclosed on the Specification Page, then Great-West will remit the PSIE Fixed Account book value to Plan Sponsor's designee within thirty (30) calendar days after the Event Date (as defined below).

With respect to the amounts in the Fixed Account associated with the PSIE that exceed the de minimis amount, Plan Sponsor must elect, in writing to Great-West, one of the following options on the date Great-West and Plan Sponsor mutually agree to transact the PSIE (the "Event Date"):

1. *PSIE Fixed Account Book Value* – Great-West shall remit to Plan Sponsor's designee the amounts associated with the PSIE Fixed Account book value no later than twelve (12) months after the Event Date. However, if the average 3 year and 5 year Constant Maturity Treasury rates, as of the Event Date, is 300 basis points or more above the lowest weekly average of the 3 and 5 year Constant Maturity Treasury rates over the 104 weeks prior to the Event Date, Great-West will remit the Fixed Account book value no later than thirty-six (36) months after the Event Date. Great-West will use published rates from the United States Federal Reserve Website.

All the terms of the Contract shall remain in effect with regard to the interests in the Contractual Account impacted by the PSIE; however, no Plan loans and no additional Contributions or Deposits shall be made after the Event Date by or at direction of the Plan Sponsor with respect to amounts impacted by the PSIE. Additionally, no Plan Sponsor Transfers of the PSIE Fixed Account book value will be permitted.

2. *PSIE Market Value Adjustment ("MVA")* – Within seven (7) Business Days after the Event Date, Great-West will remit to the Plan Sponsor's designee the lesser of (a) Plan withdrawals associated with the PSIE ("PSIE Fixed Account book value") and (b) the PSIE Fixed Account book value adjusted by the MVA factor as described below. However, if the Plan Sponsor pays from its own assets to Great-West the difference between the PSIE Fixed Account book value adjusted by the MVA factor as described below, prior to the Event Date, Great-West will remit the PSIE Fixed Account book value.

If the MVA Factor is positive, Great-West will not assess a market value adjustment.

Market Value Adjustment (MVA) = MVA Factor x Fixed Account value

The MVA Factor is:

$$MVAF = ((1+i)^3) / ((1+j+1.0\%)^3) - 1$$

Where

*i* = the three (3) year Constant Maturity Treasury rate as published in *the United States Federal Reserve Website* on the later of the Contract Date and the last business day of the week two (2) years prior to the Calculation Date.

*j* = the three (3) year Constant Maturity Treasury rate as published in *the United States Federal Reserve Website* on the last business day of the week prior to the Calculation Date.

For the purposes of establishing a Calculation Date in the MVA factor formula, unless another date is mutually agreed upon, the Calculation Date will be the date Plan Sponsor notified Great-West of the PSIE.

### **Mischaracterization of PSIE**

If the Plan Sponsor timely notified Great-West of a withdrawal, but mischaracterized such withdrawal as a Participant-initiated withdrawal when it was due to a PSIE, and Great-West paid the full requested withdrawal amount, then Great-West will adjust the Fixed Account book value in accordance with the PSIE MVA provision. Specifically, if the MVA would have been negative, Great-West will make an additional charge to the book value equal to the PSIE amount that exceeds the de minimis amount, multiplied by the MVA factor.

### **Disputes**

If a dispute arises out of, or in connection with a withdrawal that was improperly characterized as a Participant-initiated withdrawal request rather than a PSIE withdrawal, Great-West and Plan Sponsor shall agree to pursue a resolution through good faith negotiation or other appropriate dispute resolution process.

### **Contract Termination Due to Full Plan Termination**

In the event of a full Plan termination, Plan Sponsor hereby instructs Great-West to pay Plan Sponsor the Contractual Account Value in a lump sum as soon as practicable, less any outstanding fees and charges.

### **Contract Termination other than Due to Full Plan Termination**

In order for the Plan Sponsor to terminate the Contract for any reason other than a full plan termination, at least sixty (60) calendar days before the Contract termination date, Plan Sponsor must notify Great-West, in writing, of Plan Sponsor's election of one of the Contract termination options described below ("Contract Termination Options"). Great-West shall remit all Fixed Account amounts pursuant to the Plan Sponsor's election less any outstanding fees and charges. The Plan Sponsor's election of the Contract Termination Option is irrevocable.

If Great-West terminates the Contract, no additional assets will be permitted to be allocated to this Rider. Unless Great-West and Plan Sponsor otherwise agree, Great-West will continue to administer all other applicable provisions of the Contract until Plan Sponsor notifies Great-West, in writing, of Plan Sponsor's election of one of the Contract Termination Options. Interest will continue to be credited to the Fixed Account from the date of termination to the date on which final payment is made. The rate will never be less than the guaranteed minimum interest rate.

However, if, on the written notification date, the book value is less than or equal to the de minimis amount as disclosed on the Specification Page, then Great-West will remit the book value to Plan Sponsor's designee within thirty (30) calendar days after the Contract termination date less any outstanding fees and charges.

The Contract Termination Options are as follows:

1. ***Payment at Book Value*** – Great-West will remit the Contractual Account Value of the Contractholder's assets in the Fixed Account ("book value") either 12 or 36 months after the Contract termination date, depending on the conditions outlined in (a) and (b) below. Plan Sponsor and Great-West may mutually agree to an alternative book value payout date. If mutual agreement cannot be reached, then payment shall continue to proceed as described in accordance with (a) or (b), below. Starting on the Contract termination date, Great-West will continue to credit interest until Great-West remits the book value to the Plan Sponsor's designee.
  - (a) ***Payment at Book Value after 12 Months:*** Great-West will remit the book value to the Plan Sponsor's designee twelve (12) months after the Contract termination date if, on the date Great-West receives notice of Contract termination in Good Order, the average of the 3 year and 5 year Constant Maturity Treasury rates is less than 300 basis points above the

lowest weekly average of the 3 and 5 year Constant Maturity Treasury rates over the previous 104 weeks from notice.

Great-West will use published rates from the United States Federal Reserve Website.

*Numerical Example: On the date notice of Contract termination is received by Great-West in Good Order, the average of the 3 year and 5 year Constant Maturity Treasury rates is 4.00%. Over the previous 104 weeks from notice, the lowest average of the 3 year and 5 year Constant Maturity Treasury rates from the United States Federal Reserve Website was 2.25%. As 4.00% is less than 300 basis points above 2.25%, Great-West will remit the book value 12 months after the Contract termination date.*

Plan Sponsor may continue to direct Great-West to make Distributions and Participant, Alternate Payee, and Beneficiary-initiated Transfers from the Fixed Account at any time. However, no Plan Sponsor Transfers will be allowed after the Contract termination date.

Unless Plan Sponsor retains Great-West as the designated Plan recordkeeper, after the Contract termination date, Plan loans (if permitted under your Plan) will not be permitted to be made from the Fixed Account assets, and Contributions and Deposits will not be accepted into the Fixed Account.

- (b) **Payment at Book Value after 36 Months:** Great-West will remit the book value to the Plan Sponsor's designee thirty-six (36) months after the Contract termination date if, on the date Great-West receives notice of Contract termination in Good Order, the average of the 3 year and 5 year Constant Maturity Treasury rates is 300 basis points or more above the lowest weekly average of the 3 and 5 year Constant Maturity Treasury rates over the previous 104 weeks from notice.

Great-West will use published rates from the United States Federal Reserve Website.

*Numerical Example: On the date notice of Contract termination is received by Great-West in Good Order, the average of the 3 year and 5 year Constant Maturity Treasury rates is 6.00%. Over the previous 104 weeks from notice, the lowest average of the 3 year and 5 year Constant Maturity Treasury rates from the United States Federal Reserve Website was 2.50%. As 6.00% is more than 300 basis points above 2.50%, Great-West will remit the book value 36 months after the Contract termination date.*

Plan Sponsor may continue to direct Great-West to make Distributions and Participant, Alternate Payee, and Beneficiary-initiated Transfers from the Fixed Account at any time. However, no Plan Sponsor Transfers will be allowed after the Contract termination date.

Unless Plan Sponsor retains Great-West as the designated Plan recordkeeper, after the Contract termination date, Plan loans (if permitted under your Plan) will not be permitted to be made from the Fixed Account assets, and Contributions and Deposits will not be accepted into the Fixed Account.

- 2. Payment in 20 Quarterly Installments** – Great-West will remit the total Contractual Account Value of the Contractholder's assets in the Fixed Account ("book value") in twenty (20) quarterly installments. Great-West will make the first installment no later than ninety (90) calendar days after Contract termination date. The first installment will be 1/20<sup>th</sup> of the book value on the payment date. The remaining installments will be incrementally remitted in fractional amounts of remaining book value each calendar quarter over the succeeding nineteen quarters (e.g., 1/19, 1/18...1/1) until the total book value is remitted. Great-West will continue to credit interest to the book value held in the Fixed Account (i.e., the portion of the book value that has not been transferred out of the Fixed Account) until Great-West remits the total book value to the Plan Sponsor's designee.



Plan Sponsor may continue to direct Great-West to make Distributions and Participant, Alternate Payee, and Beneficiary initiated Transfers from the Fixed Account at any time. However, no Plan Sponsor Transfers will be allowed after the Contract termination date.

Unless Plan Sponsor retains Great-West as the designated Plan recordkeeper, after the Contract termination date, Plan loans (if permitted under your Plan) will not be permitted to be made from the Fixed Account assets, and Contributions and Deposits will not be accepted into the Fixed Account.

3. **Lump Sum Payment with Market Value Adjustment** – The Market Value Adjustment (“MVA”) of the Fixed Account value will be calculated as of the date Great-West receives notice of Contract termination in Good Order, or another date as mutually agreed (“Calculation Date”). Within seven (7) Business Days after the Contract termination date, Great-West will remit the lesser of (a) the total Contractual Account Value in the Fixed Account (“book value”) and (b) the book value adjusted by the MVA factor. However, if Great-West receives the difference between the book value and the book value adjusted by the MVA factor from the Plan Sponsor prior to the Contract termination date, Great-West will remit the book value.

Market Value Adjustment (MVA) = MVA Factor x Fixed Account value

The MVA Factor is:

$$MVAF = ((1+i)^3) / ((1+j+1.0\%)^3) - 1$$

Where

*i* = the three (3) year Treasury Constant Maturity rate as published in *the United States Federal Reserve Website* on the later of the Contract Date and the last business day of the week two (2) years prior to the Calculation Date.

*j* = the three (3) year Treasury Constant Maturity rate as published in *the United States Federal Reserve Website* on the last business day of the week prior to the Calculation Date.

4. **Any other termination option** allowable under applicable law as mutually agreed upon in writing by Great-West and the Plan Sponsor.

#### **Plan Sponsor Termination and/or Transfer of Fixed Account under the Contract**

If Plan Sponsor elects to remove this Fixed Account as an eligible investment option but does not desire to terminate the Contract, Plan Sponsor must elect one of the Contract Termination Options listed in the “Contract Termination other than Due to Full Plan Termination” section of this Rider. Alternatively, if Plan Sponsor elects to remove this Fixed Account as an eligible Plan investment option but does not terminate the Contract, Plan Sponsor may request to transfer the Contractholder’s Fixed Account value on a mutually agreeable date to another series of the Fixed Account. For purposes of this section, any references to Contract termination and Contract termination date in the “Contract Termination other than Due to Full Plan Termination” section of this Rider will be interpreted as Fixed Account Rider termination and Fixed Account Rider termination date, respectively.

#### **General**

For the purposes of the reference in the Rider, Great-West shall use a comparable source if applicable information is unavailable in the United States Federal Reserve Website.

# **GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY**

A Stock Company

## **GROUP UNALLOCATED ANNUITY CONTRACT SPECIFICATION PAGE**

This Specification Page is made part of the Great-West Life & Annuity Insurance Company Group Annuity Contract ("Contract") to which it is attached.

Terms defined in the Contract have the same meaning where used in this Specification Page.

PLAN SPONSOR	<b>City of Allegan, MI</b>
CONTRACTHOLDER	<b>City of Allegan, MI and the Trustee/s of the City of Allegan 457 Plan as identified on the Group Annuity Contract Application</b>
PLAN	<b>City of Allegan 457 Plan</b>
CONTRACT NUMBER	<b>100385-01</b>
CONTRACT DATE	August 22, 2023 or the later of the dates signed by all parties.

### **OTHER PROVISIONS**

**Great-West Investment Fixed Account De Minimis Pay-out Amount** – The minimum guaranteed de minimis amount is \$20,000.

# EMPOWER ANNUITY INSURANCE COMPANY of AMERICA

A Stock Company

8515 East Orchard Road, Greenwood Village, CO 80111

For service, call 1-855-756-4738

## NAME CHANGE ENDORSEMENT ("Endorsement")

*This Endorsement is issued by Empower Annuity Insurance Company of America as part of the Policy, Certificate, Contract, and/or Agreement to which it is attached.*

Great-West Life & Annuity Insurance Company has changed its name to Empower Annuity Insurance Company of America. As a result of the name change, your Policy, Certificate, Contract and/or Agreement is amended as follows:

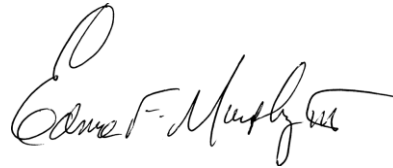
The name of the issuing company for your Policy, Certificate, Contract and/or Agreement is hereby changed from Great-West Life & Annuity Insurance Company to **Empower Annuity Insurance Company of America**.

Accordingly, all references in your Policy, Certificate, Contract and/or Agreement to Great-West or GWL&A are hereby changed to **Empower**.

All other terms and conditions of the Policy, Certificate, Contract and/or Agreement remain unchanged.

The effective date of this Endorsement is the later of (a) September 1, 2022, and (b) the Policy, Certificate, Contract and/or Agreement effective date.

Signed for Empower Annuity Insurance Company of America.



President

## ADMINISTRATIVE SERVICES AGREEMENT

---

This Administrative Services Agreement (“Agreement”) sets forth the general terms and conditions under which Empower Retirement, LLC (“Empower”) will provide administrative services to the undersigned Plan Sponsor with respect to Plan Sponsor’s defined contribution plan (the “Plan” or “Plans”) established pursuant to Code section 401(a), 401(k) or 457(b) (as applicable).

### 1. Definitions

“Agreement” includes this base Administrative Services Agreement as well as the attached Schedule of Services and a separately executed fee schedule or fee proposal (“Fee Schedule”).

“Business Day” means any day, and only for as many hours as, the New York Stock Exchange is open.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Empower” and “Empower Retirement” refer to Empower Retirement, LLC and its affiliates with respect to products and services offered in the retirement markets, including but not limited to recordkeeping and communication services.

“Participant” shall mean an employee, former employee, Plan participant, participant, former participant, beneficiary or alternate payee who is or may be entitled to participate in or receive benefits under the Plan.

“Plan Sponsor” and “Employer” refer to the undersigned Employer, the Plan Sponsor, Plan Administrator, named fiduciaries, and other delegates of the Employer (other than Empower), as dictated by the context.

### 2. Services Provided by Empower

**2.1. Services.** Empower will provide the services set forth in this Agreement (collectively the “Services”). In the performance of the Services, Empower will act as a non-discretionary service provider directed by the Plan Sponsor in compliance with applicable laws and regulations. The parties agree that the purchase and sale of securities for the Plan, except for employer stock and unaffiliated self-directed brokerage, will be effected through Empower Financial Services, Inc., a broker/dealer affiliate of Empower.

**2.2. Non-Fiduciary Status.** Plan Sponsor acknowledges that the Services are ministerial and are not intended to involve the exercise of any discretion that would cause Empower to be a fiduciary or Plan Administrator as defined under the Code, the Investment Advisors Act of 1940, or state law, as applicable. Nothing in this Agreement or otherwise shall result in Empower having any discretionary authority or responsibility for the administration of the Plan, including management of the Plan or disposition of Plan assets. Empower shall not render, or have any authority or responsibility to render, investment advice for a fee or other compensation, direct or indirect, with respect to any Plan assets.

**2.3. No Tax or Legal Advice.** Nothing in this Agreement is intended to constitute legal or tax advice from Empower to Plan Sponsor, or to any other party. Plan Sponsor understands that Empower has not given and may not give legal advice. All issues should be reviewed and discussed with Plan Sponsor’s legal counsel and/or tax adviser.

### 3. Responsibilities of Plan Sponsor

Plan Sponsor acknowledges that Empower cannot effectively perform the Services without Plan Sponsor's cooperation. Accordingly, Plan Sponsor acknowledges and agrees that it will fulfill the following duties and obligations.

**3.1. Plan Administrator.** Plan Sponsor, a designated employee or committee, or a third party retained by Plan Sponsor or named in the Plan (other than Empower or one of its affiliates) will be the "plan administrator" and "named fiduciary" as defined by applicable law.

**3.2. Provision of Information.** Plan Sponsor or its designee, including any third parties retained by or on behalf of the Plan or Plan Sponsor, will provide all information necessary for Empower to perform the Services in a manner and format that does not require manual intervention or manipulation by Empower. Plan Sponsor acknowledges and agrees that Empower shall not bear any responsibility for any penalties or other costs incurred as a result of Plan Sponsor's failure to provide such information in a timely manner. Plan Sponsor further acknowledges and agrees that Empower may charge an additional fee if any necessary information is not provided on a timely basis, or in an electronic format usable by Empower without any manual intervention or manipulation. Plan Sponsor agrees that Empower shall be entitled to fully rely upon the accuracy and completeness of information Plan Sponsor submits and that Empower shall have no duty or responsibility to verify such information. If, as a result of incorrect or incomplete information furnished by Plan Sponsor, it becomes necessary to repeat any calculation or service, complete any new forms or revise any completed forms, Empower reserves the right to charge an additional fee. Each party agrees to bear its own interconnect transmission costs and is solely responsible for its own acts and omissions relating to transmitting, receiving, storing and handling documents and information, including the maintenance of all equipment, software and testing necessary to effectively, reliably and securely send and receive such documents and information.

**3.3. Remitting Contributions and Allocation Instructions.** Plan Sponsor agrees that it is solely responsible for collecting and remitting all initial and recurring contributions and loan repayments to Empower electronically via Empower's plan sponsor website, or another mutually agreed-upon manner within the time prescribed by applicable law. Plan Sponsor acknowledges that Empower is not responsible for monitoring the amount and/or timeliness of such contributions and loan repayments. In the event that a Plan participant ("Participant") does not elect investment options, Plan Sponsor directs Empower to invest the contribution in the default investment option under the Plan at the time the contribution is received. Plan Sponsor acknowledges that Empower reserves the right to either reject contributions remitted via ACH without proper proceeds or to assess an additional processing charge, and that in such event Empower further reserves the right to reject all future ACH contribution remittances from Plan Sponsor. With respect to Plan- or Plan Sponsor-initiated distributions or rollovers, Plan Sponsor hereby instructs and authorizes Empower to rely upon the information on Empower's recordkeeping system for purposes of tax reporting and withholding, and to treat payees with U.S. addresses as U.S. persons and payees with foreign addresses as foreign persons. Plan Sponsor certifies that such information is accurate and compliant with the Foreign Account Tax Compliance Act (FATCA) and the Code, and that required documentation supporting such information has been collected by Plan Sponsor.

**3.4. Plan Document and Compliance Responsibilities.** Plan Sponsor has the responsibility to ensure that the Plan documents are accurate and complete and that the Plan is being operated in accordance with its terms and applicable law. Plan Sponsor shall provide Empower with a signed copy of the Plan document and all amendments to the Plan document within thirty (30) days after such document and/or amendment is adopted. Plan Sponsor acknowledges that it is responsible for reviewing the accuracy

and completeness of all Plan document services performed by Empower, if any. Plan Sponsor is solely responsible for ensuring that a Plan is qualified under the Code.

**3.5. Disclosures.** Plan Sponsor agrees to comply with all of its notice and disclosure responsibilities under applicable law.

**3.6. Investment Options.** Plan Sponsor is responsible for the selection of all investment options made available under the Plan (“Investment Options”) based on Plan Sponsor’s independent evaluation, or that of its registered investment advisor, consultant, broker or other agent, as applicable. Plan Sponsor must notify Empower in writing of the Investment Options intended to be serviced by Empower and such Investment Option services are only provided as agreed upon by Empower and may be subject to certain limitations or conditions. Plan Sponsor acknowledges that the Plan’s transition to Empower may be delayed if there is a change in the Investment Option selections.

As part of the Services provided by Empower, the Plan’s assets may be invested in a group annuity contract and/or array of funds offered by Empower, its affiliates or other investment providers (the “Investment Program”). Empower may add, delete and/or replace available investment options offered under the Investment Program with at least sixty (60) days written notice to Plan Sponsor or the Plan fiduciary. This notice will explain the fund change, communicate the timeline and effective date of the fund change, provide information on fees received by Empower or an affiliate from a fund company, and explain Plan Sponsor’s or the Plan fiduciary’s right to opt out of the change. Plan Sponsor or the Plan fiduciary will be deemed to have approved such change unless Plan Sponsor’s or Plan fiduciary’s written objection is received by Empower within the sixty (60) day notice period. If Plan Sponsor or the Plan fiduciary objects to the fund change, Empower may terminate this Agreement, but will continue to provide services for at least sixty (60) days after the effective date of the fund change.

If allowed within the Investment Program, Plan Sponsor may request an addition, deletion, and/or replacement with respect to investment options available in the Plan. Plan Sponsor must provide Empower with notice of the intended change sixty (60) days prior to the intended date of the fund lineup modification. Empower must confirm, in writing, its ability to administer any requested fund additions, deletions and/or replacements prior to these changes being implemented. Once Empower receives notice of such fund change request, Empower will assess the Plan’s pricing and the selected fund company’s administrative requirements. Empower reserves the right to decline a fund change request if Empower is unable to administer the fund requested. Additionally, Empower reserves the right to reevaluate and modify the Fee Schedule as part of the request, and the Plan Sponsor acknowledges that such a request could impact the fees paid by the Plan or Plan Sponsor. The Plan Sponsor shall provide sufficient notice of the Plan’s desired fund change to provide Empower with the opportunity to conduct the necessary review and to ensure that Plan participants can be provided with notification of fund changes at least thirty (30) days prior to the effective date of the change. If applicable, Plan Sponsor agrees to cooperate with Empower to create and deliver all necessary participant communications, and acknowledges that there may be an additional cost for such communications.

If Plan Sponsor offers Plan Investment Options that are recordkept outside of this Agreement (“Outside Assets”), Plan Sponsor hereby instructs Empower to restrict any and all transfers between the Outside Assets and the Plan assets recordkept under this Agreement. If Plan Sponsor has selected an Empower annuity product, Plan Sponsor agrees that any provision(s) of the group annuity contract to the contrary are inoperable with respect to the Plan.

Plan Sponsor acknowledges that Empower or its affiliates may receive fees from mutual fund families or other Investment Option sponsors or their affiliates for providing certain administrative or other services thereto (“Fund Service Fees”). Plan Sponsor may request additional information regarding such

fees at any time. If the provider of an Investment Option causes an Investment Option to become unavailable, Empower will notify Plan Sponsor as soon as practicable after the Investment Option Sponsor notifies Empower. If any employer securities are included as an Investment Option or are otherwise contributed under the Plan, (i) Plan Sponsor shall be responsible for any Securities and Exchange Commission (the “SEC”) or state registration, prospectus delivery or Form 11-K annual reporting requirements; and (ii) Empower shall not be responsible for the enforcement of or compliance with any SEC or Employer regulations or policies related to insider trading in Employer securities or the reporting of such trading. Plan Sponsor acknowledges that the SEC requires mutual fund companies to establish procedures to prevent market timing and excessive trading. Plan Sponsor agrees to adhere to the terms and conditions of such procedures included with this Agreement, as amended from time to time.

**3.7. Payment of Plan Expenses.** Plan Sponsor may direct Empower in writing to deduct Plan expenses from the Plan to the extent Plan Sponsor has determined that deduction is specifically allowed by the Plan document and applicable law, and to remit to the party designated by the Plan Sponsor.

**3.8. Direction by Plan Sponsor.** In performing the Services, Empower is acting at the direction of the Plan Sponsor or other named fiduciary of the Plan. Plan Sponsor agrees to provide direction in a manner reasonably requested by Empower, and Empower may rely upon any such direction, whether provided electronically or in writing, by a person that Empower reasonably believes to be authorized to act on behalf of the Plan Sponsor or other named fiduciary. Plan Sponsor agrees that all services and procedures to be followed by Empower as set forth in any service profile, summary plan description (if applicable), plan administrative guide, administrative form or other similar document will constitute direction by the Plan Sponsor to Empower, unless Plan Sponsor indicates otherwise. Plan Sponsor specifically intends that Empower will have no discretionary authority with respect to such “deemed” approved transactions, and that Empower’s responsibility is limited solely to confirming it has been provided in good order and in accordance with the procedure.

**3.9. Electronic Delivery.** Empower will deliver plan-related documents to Participants under the Agreement in an electronic manner as described below.

**3.9.1.** Plan notices to be delivered by Empower will be delivered via an email notice of the availability of the plan-related document on the Participant website sent to an email address provided to Empower by the Participant or by the Plan Sponsor. If Empower is not provided with an email address, notices will be delivered to the Participant via regular mail.

**3.9.2.** Empower will send an initial notification of default electronic delivery via regular mail to each Participant at least 10 days prior to delivering any plan-related documents via email. The initial notice of default electronic delivery will include the participant’s email address that will be used to deliver notices of the availability of plan-related documents, a statement of the Participant’s right to request and obtain a paper version of the documents and a statement of the option to opt out of electronic delivery and receive only paper versions of the documents.

**3.9.3.** If an email notice of availability of a plan-related document is returned undeliverable, Empower will send the notice to another email on file for the Participant. If no other email is on file for the Participant or such other email is also returned undeliverable, plan related documents will be delivered via regular mail to the Participant until such time as Empower is provided another email address for the Participant.



**3.9.4.** Participants may request to receive one paper copy of a plan-related document for no cost. In addition, Participants may opt out of electronic delivery and request that their plan-related documents be delivered via regular mail at any time.

**3.10. Review of Reports.** Plan Sponsor and Participants are responsible for reviewing and monitoring reports made available by Empower (whether provided electronically, by posting on an Empower website, or otherwise) regarding Plan activity, transactions and investments to verify that the investments indicated in the reports properly reflect the investment directions provided by the Plan Sponsor or the investment elections made by Participants, as applicable. Empower's performance of its obligations under this Agreement shall be conclusively presumed to be accurate unless Plan Sponsor or a Participant provides Empower with proper notice of discrepancies.

**3.11. Error Correction.**

**3.11.1. Transactional and Operational Errors.**

**a. Transactional Errors.** If Empower does not accurately process contribution, distribution, or investment instructions provided in good order by a Participant or the Plan Sponsor (e.g., investment allocation of Plan contributions, investment exchanges or transfers, or timely processing of a Plan distribution) and the issue is timely brought to Empower's attention, Empower will, at its own expense, retroactively correct the Plan or Participant account to reflect its adjusted financial position had the error not occurred, including any investment earnings and reduced by any investment losses. If the issue is not timely brought to Empower's attention, Empower may correct the error by adjusting the Plan or Participant account prospectively.

**b. Plan Operational Errors.** If Empower is timely notified that it has made an error that creates an operational or fiduciary issue for the Plan, Empower will, within a reasonable time after being notified of or discovering such error, notify the Plan Sponsor and describe the corrective option that Empower proposes to employ that is consistent with the Internal Revenue Service, Department of Labor, or other agency correction guidelines, where applicable, and Plan Sponsor shall review the proposed correction option. Unless the Plan Sponsor objects to such proposed correction and requests an alternate correction option within five (5) business days after receiving notice of Empower's suggested corrective option, the Plan Sponsor Directs Empower to promptly process the correction in accordance with the proposal, at Empower's expense. If Empower's proposed correction is consistent with Internal Revenue Service, Department of Labor, other agency correction guidelines, or other guidance, but the Plan Sponsor requests an alternate correction method resulting in expenses in excess of what Empower would have incurred under its proposed correction, the Plan Sponsor shall bear such additional expenses (including without limitation any attorney's fees, regulatory filing costs and additional net loss resulting from such method).

**3.11.2. Trading Errors.** If Empower does not accurately process a trade with the mutual fund company as Directed by the Plan Sponsor or as instructed by a Participant, then Empower will correct the share position at the mutual fund company as if the error had not occurred. In the event there are multiple funds or related errors in one or more funds involved, Empower will net gains and losses across all funds involved in the associated error(s). If the Plan Sponsor utilizes the services of a third-party trustee and/or custodian ("**Third-Party Trustee**"), Empower shall in no event be required to perform any correction: (i) for a trading error that results from an error or omission by the Third-Party Trustee, (ii) to be performed under the terms of any service arrangements between the Plan Sponsor and such Third-Party Trustee (the "**Third-Party Trust Agreement**"), (iii) that falls within error tolerance ranges under the Third-Party Trust



Agreement, or (iv) that otherwise would exceed any requirements for error correction by the Third-Party Trustee under the Third-Party Trust Agreement.

**3.11.3.** The parties acknowledge and agree that Empower will have no liability for an error caused by acts or omissions of the Plan Sponsor, Participants or any other third party.

**3.11.4. Duty to Mitigate.** The parties acknowledge and agree that the Plan Sponsor, the Plan Administrator and Participants each have a duty to mitigate any errors so as to minimize the expenses that may be incurred to correct such errors by promptly reviewing transaction confirmations, account statements and other Plan reports, as applicable, and providing notification of any error, providing timely approval of correction measures and taking such other reasonable steps as may be necessary (e.g., proactively transferring account holdings into the appropriate Investment Option).

**3.11.5. Transactional Gain/Loss Compensation Policies for Error Correction.** Empower may incur a gain or loss in the process of adjusting a Plan or Participant account to correct certain errors due to changes in the share/unit price of an Investment Option between the original transaction date and the correction date. The adjusted position of Plan and Participant accounts are not impacted by transactional gains or losses incurred by Empower to settle the Investment Option positions in the course of correcting the account. Empower will net any Investment Option pricing differences as part of the correction process. If a correction is made at Empower's expense, Empower, not the Plan or Participant, will incur any transactional loss and Empower will retain any transactional gain.

**3.12. Requirement to Appoint a Trustee.** Plan Sponsor is responsible for determining whether to appoint a trustee to provide trust services to the Plan and for selecting the trustee. If Plan Sponsor chooses to fund the Plan exclusively through an Empower group annuity contract, if available, the annuity contract may be used in lieu of a separate trust agreement, and Plan Sponsor will be considered the deemed trustee. If a trust agreement is used, Plan Sponsor agrees to have the trustee execute such agreement and all other documents required to establish and operate the trust.

Any trustee or custodian selected by Plan Sponsor for the Plan must be able to interface with Empower's recordkeeping system in a "passive" role and all assets must be transferred to the omnibus custodial bank account. Plan Sponsor agrees to require the trustee or custodian to provide to Empower all information in the possession of the trustee or custodian that is necessary for the performance of Empower's duties under this Agreement.

If Plan Sponsor chooses to retain Empower Trust Company, LLC ("ETC") to serve as a Plan trustee or custodian, Plan Sponsor agrees to execute any and all documents required to establish the trust or custodial account. If Plan Sponsor, another entity or named employees serve as trustee of the Plan and ETC does not serve as a trustee, Plan Sponsor agrees to enter into a custodial agreement or other applicable agreement with ETC for the receipt of contributions.

**3.12.1. Trustee/Custodian Services.** If Trustee or Custodian services are provided by ETC, the compensation received by ETC for such services is reflected in the Plan's fee disclosure report provided by Empower and the Empower Trust Company Bank Credits below. Additional fees may be reflected in the trust or agreement between ETC and Plan Sponsor. If Plan Sponsor selects a trustee or custodian that requires changes to any procedures or services in the Agreement, Empower reserves the right to change fees in this Section.

**3.12.2. Empower Trust Company Bank Credits.** If Plan assets pass through a bank account held by the trustee or custodian or its Affiliates, the trustee or custodian may earn credits and/or

interest on Plan assets awaiting investment or pending distribution. Any credits or interest earned by the trustee or custodian are aggregated with credits and/or interest earned by the trustee or custodian's Affiliates and will be used to defray the aggregate expenses for the maintenance of bank accounts. The trustee or custodian will not retain credits and/or interest earned in excess of such maintenance expenses. Credits and/or interest are earned from the use of (i) uninvested contributions received too late in the day or not received in good order to be invested same-day and (ii) proceeds from Investment Option redemptions where Plan distribution checks have not been presented for payment by Participants. Credits and/or interest (i) begin to accrue on contributions on the date such amounts are deposited into the bank account and end on the date such amounts are invested pursuant to Participant instructions, and (ii) begin to accrue on distributions on the date the check is written or on the ACH date, as applicable, and end on the date the check is presented for payment or when the ACH clears against the account, as applicable. Earnings of credits and/or interest are at the rate the bank provides from time to time.

Plan Sponsor acknowledges that any change to the trustee and/or custodial setup or relationships during implementation may delay the Effective Date.

#### **4. Fees & Charges**

**4.1. Fees.** Plan Sponsor agrees to pay Empower for the Services in accordance with the Fee Schedule, excluding any applicable sales, use, excise, services, consumption and other taxes or duties as described in Section 4.2 below. To the extent not paid by the Plan, Plan Sponsor agrees to pay Empower within thirty (30) days of Empower's invoice to the Plan Sponsor for services provided to the Plan. In the event any charges or fees reasonably and properly chargeable under the terms of the Agreement remain unpaid after sixty (60) days after the date billed, Plan Sponsor directs Empower to deduct such expense charges from the Plan and Plan Sponsor affirms that the Plan document specifically allows such deduction from the Plan. To the extent that the forfeiture or other Plan accounts would not pay Plan expenses under the Plan document or the Plan accounts are insufficient, Plan Sponsor directs Empower to allocate such fees to the Participant accounts, and to the investment choices in which the Participant accounts are invested, on a pro rata basis using Participant account and investment option balance ratios as of the date of deduction. Plan Sponsor agrees to amend the Plan, if necessary, to provide for the payment of expenses from Plan assets consistent with the foregoing. Empower reserves the right to change its fees upon ninety (90) days' advance written notice to Plan Sponsor.

Plan Sponsor directs Empower to debit from the Plan the amount of fees payable to any outside third parties retained by Plan Sponsor to provide plan administration, investment advisory, or other services ("Plan Service Providers"), as detailed in the Fee Schedule, and to remit the fees directly to the Plan Service Provider.

**4.2. Taxes.** Unless Plan Sponsor provides Empower with a valid and applicable exemption certificate, Plan Sponsor will reimburse Empower for sales, use, excise, services, consumption and other taxes or duties that Empower is required to collect from the Plan Sponsor and which are assessed on the purchase, license and/or supply of Services. Plan Sponsor and Empower shall each bear sole responsibility for all taxes, assessments and other real property related levies on its owned or leased real property, personal property (including software), franchise and privilege taxes on its business, and taxes based on its net income or gross receipts. If applicable, Plan Sponsor and Empower shall reasonably cooperate to more accurately determine each party's tax liability and to minimize such liability to the extent legally permissible.

#### **5. Confidentiality & Data Privacy**

**5.1.** In order to perform the Services, both parties may have access to certain information of the other party, including, without limitation, trade secrets, commercial and competitively sensitive information of the party related to business methods or practices, and proprietary software or websites of the party ("Confidential Information"). For the purpose of clarity, any software or website owned, licensed or made available by Empower ("Empower Software") is Confidential Information of Empower. The parties mutually agree to hold all Confidential Information of the other party in confidence and not to disclose any Confidential Information of the other party to anyone except the parties' affiliates, suppliers, and respective personnel in connection with the performance or receipt of Services hereunder or as directed or approved by the other party or its agents. Confidential Information does not include: information that is otherwise in the public domain through no action of the non-disclosing party; information that is acquired by a party from a person other than the other party or its agents without any obligation of confidentiality; or information that is independently developed by a party without reference to the Confidential Information of the other party.

**5.2.** In the event a party is required to make a legally required disclosure of the other party's Confidential Information, such party shall notify the other party of the disclosure as soon as reasonably practicable, and shall cooperate with any efforts by such party to obtain protective treatment of such Confidential Information to the extent permitted by law. The foregoing shall not apply to broad-based regulatory examinations associated with a party's general business or operations, to disclosures made in conjunction with a law enforcement investigation, or where notice is prohibited by law.

**5.3.** Empower and Plan Sponsor each agree to maintain and hold in confidence all Nonpublic Personal Information received in connection with the performance of Services under this Agreement ("NPI"). Empower and Plan Sponsor agree that their collection, use and disclosure of any and all NPI is and will be at all times conducted in compliance with all applicable data protection and/or privacy laws, rules and/or regulations. NPI includes personally identifiable financial information as defined by Title V of the Gramm-Leach-Bliley Act. Plan Sponsor authorizes Empower to disclose NPI to its affiliates, service providers, and Plan Service Providers in connection with Empower's performance of Services under this Agreement. In addition, Plan Sponsor authorizes Empower to disclose NPI to Plan Sponsor's advisors, third-party administrators, service providers (such as payroll providers) and representatives authorized by Plan Sponsor in writing to receive such Data. Empower may use and disclose, for benchmarking and research purposes, de-identified NPI that is aggregated with other anonymized data of a similar nature across Empower's client base in a manner that makes such NPI unidentifiable to a particular individual or plan. Empower's current Privacy Notice is attached to this Agreement, but shall not lessen any of Empower's obligations regarding NPI hereunder. Plan Sponsor agrees that any changes to the Privacy Notice may be delivered to Plan Sponsor through the Plan Service Center.

**5.4.** The parties will use best efforts to secure NPI through the use of appropriate physical and logical security measures, and will take all commercially reasonable organizational and technical steps to protect against unlawful and unauthorized processing of NPI.

**5.5.** The parties will promptly notify the other in the event of (i) any confirmed breach of the party's security measures that results in unauthorized access to or theft of NPI; (ii) the consequences of the breach, including (without limitation) any potential impact on the other party's security measures, systems, data (including but not limited to NPI) or the Empower Software (defined above); and (iii) the corrective action taken to remedy the breach. In addition to the foregoing, Plan Sponsor will notify Empower immediately upon discovering a compromise of the security and/or log-on credentials of any Plan Sponsor employee or agent that has a plan administration role in Empower's system.

**5.6.** Plan Sponsor acknowledges that Empower maintains security and fraud mitigation protocols (such as multi-factor authentication) designed to comply with statutory obligations and to safeguard Participant identities, Participant accounts, or access to Empower Software. Empower may update these protocols as needed to address new or evolving threats and statutory obligations. Plan Sponsor agrees to cooperate with Empower to implement, support, or otherwise cooperate in the implementation of any such updates, changes or enhancements. To the extent Empower offers Participants protection against account losses that result from unauthorized transactions, such protection is not available if Plan Sponsor fails to meet the requirements of this provision, or if the loss resulted from a compromise of the systems or security protocols of Plan Sponsor or its third party service providers (other than Empower).

**5.7.** Upon request, Empower will provide Plan Sponsor or its designated agent with information (which may include NPI) received from or in relation to Participants in connection with the performance of services under this Agreement including recorded phone calls and written and electronic correspondence. To the extent Plan Sponsor requests such information, Plan Sponsor agrees to indemnify Empower and to waive, absolve and forfeit any claims against Empower for providing such information to the Plan Sponsor or its designated agent.

**5.8.** For purposes of Rule 14(b)-1 and Rule 14(b)-2 of the Securities Exchange Act of 1934, as amended from time to time, Plan Sponsor authorizes Empower, and/or its affiliates and services providers, to provide the name, address and share position of the Plan with respect to any class of securities registered under the Investment Company Act of 1940 when requested by such SEC registrant for purposes of shareholder meetings. The above-referenced rules prohibit the requesting SEC registrant from using the Plan's name and address for any purpose other than corporate communications of the type contemplated under the rules.

## **6. Business Continuity & Disaster Recovery**

**6.1.** Empower will maintain business continuity and disaster recovery procedures to address the security, integrity and availability of the technology, operational, financial, human and other resources required to provide the Services. Such procedures shall be designed to enable Empower to continue to perform mission-critical Services in the event of a natural disaster or other interruption of normal business operations. Such procedures will be tested at least once annually.

**6.2.** Empower Financial Services, Inc.'s current Business Continuity Plans Notice is attached to this Agreement. By executing this Agreement, Plan Sponsor acknowledges receipt of this Notice.

## **7. Records & Audit**

**7.1. Record Retention.** Empower shall retain all records in its custody and control that are pertinent to performance under this Agreement in accordance with its record retention policy and as required by applicable law. Subject to the foregoing, each party agrees to return or destroy the other party's Confidential Information and NPI once it is no longer required for the purpose of performing or receiving the Services, provided that the parties are not obligated to destroy copies of Confidential Information or NPI that must be retained for audit, legal or regulatory purposes, or is stored in non-readily accessible electronic format, such as on archival systems.

**7.2. SSAE 18.** Each year upon the request of Plan Sponsor, Empower will provide Plan Sponsor with a copy of the review performed by Empower's external auditors under the "Statement of

Standards for Attestation Engagements Number 18, Attestation Standards: Clarification and Recodification” of the American Institute of Certified Public Accountants (SSAE18) SOC 1, or any new or replacement standard or protocol established by the American Institute of Certified Public Accountants.

## **8. Intellectual Property Rights**

**8.1. Plan Sponsor Materials.** As between the parties hereto, excluding the Empower Materials (as defined below), Plan Sponsor shall own all trademarks, trade names, logos, trade dress, and other Confidential Information provided or made accessible by Plan Sponsor to Empower in providing the Services (collectively, the “Plan Sponsor Materials”). Plan Sponsor grants to Empower a nonexclusive, nontransferable and non-sublicensable license to use Plan Sponsor Materials in connection with its provision of the Services. Nothing contained herein shall prohibit Empower from referencing client partnerships in the normal course of public-relations communications or in materials prepared at the request of prospective clients.

**8.2. Empower Materials.** As between the parties hereto, Empower and its affiliates shall own all materials, documentation, user guides, forms, templates, business methods, trademarks, trade names, logos, websites, Empower Software, technology, computer codes, domain names, text, graphics, photographs, artwork, interfaces, and other information or material provided by Empower or its affiliates hereunder (collectively, the “Empower Materials”). Empower grants to Plan Sponsor and Participants (as applicable) a nonexclusive, non-transferable and non-sublicensable license to use the Empower Materials during the term of the Agreement solely for purposes of using Empower’s Services hereunder and subject to the terms and conditions set forth in this Agreement and any terms of use associated with Empower Software. All rights with respect to the Empower Materials not specifically granted hereunder are reserved by Empower.

## **9. Liability & Indemnification**

**9.1.** Empower agrees to indemnify the Plan Sponsor from and against any and all expenses, costs, reasonable attorneys’ fees, settlements, fines, judgments, damages, liabilities, penalties or court awards asserted by a third party (collectively, “Damages”) to the extent resulting from Empower’s breach of this Agreement, negligence, or willful misconduct. Notwithstanding anything to the contrary herein, Empower shall not be liable to Plan Sponsor for any Damages resulting from: 1) any acts or omissions undertaken at the direction of the Plan Sponsor or any agent or any third party authorized by Plan Sponsor to provide direction to Empower, including but not limited to prior service providers, investment advisors, or any authorized agent thereof; 2) any performance of the Services that is in strict compliance with the terms of this Agreement; or 3) Plan Sponsor’s or its designee’s failure to provide accurate documents, material, information or data to Empower or its affiliates, as applicable on a timely basis.

Plan Sponsor acknowledges that Empower and its directors, officers, employees and authorized representatives are not responsible for the investment performance of any Investment Options under the Plan.

**9.2. Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT) EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



**9.3. Insurance.** Empower will, at its own cost and expense, procure and maintain in full force and effect throughout the term of this Agreement insurance coverage that is reasonably appropriate to the Services provided under this Agreement. The requirements in this section are not intended to, and will not in any way, limit or qualify the liabilities and obligations of Empower under this Agreement.

## **10. Dispute Resolution**

The parties shall engage in reasonable and good faith discussions to resolve any dispute arising out of or relating to this Agreement. If the parties are unable to agree between themselves, the parties will submit the dispute to non-binding mediation conducted by a private mediator agree to by both parties. If the parties cannot agree on a mediator, the mediator may be selected by a nationally recognized, independent arbitration or mediation organization to which the parties mutually agree. The costs of mediation shall be borne equally by the parties, and each party shall pay its own expenses. If the parties are unable to resolve the dispute through non-binding mediation, either party may initiate litigation; provided, however, that if one party requests mediation and the other party rejects the proposal or refuses to participate, the requesting party may initiate litigation immediately upon such refusal.

## **11. Termination**

**11.1. Effective Date.** This Agreement will be effective as of the Effective Date specified in the Signature Page and will continue in effect for the initial term, if any, specified in the Fee Schedule and will continue thereafter until terminated in accordance with the termination provisions of this Agreement.

**11.2. Termination.** This Agreement may be terminated by either party, in whole or in part, by delivering sixty (60) days advance written notice to the other party. Plan Sponsor directs Empower to deduct any and all outstanding expenses and fees owed to Empower from the Plan's trust on the termination date, unless paid by Plan Sponsor. Plan Sponsor agrees to amend the Plan, if necessary, to provide for the payment of expenses from the Plan consistent with the foregoing. Plan Sponsor acknowledges that after the termination of this Agreement, Plan Sponsor will be responsible for performing all actions required to be taken with respect to the Plan including, but not limited to: processing of contributions, loans and distributions, and the distribution of forms to Participants. On and after the actual date of termination of this Agreement, Empower shall have no further obligations hereunder except as set forth in this subsection. Notwithstanding the foregoing, upon a written request by Plan Sponsor, Empower will provide Plan Sponsor, or a designated successor service provider, with Plan data and other information residing on Empower's recordkeeping system in Empower's standard format or another mutually agreeable format. Any request for Empower to provide information other than in its standard format shall be at Empower's sole discretion, and Plan Sponsor agrees to pay all fees, costs and expenses associated with such a request.

**11.3. Plan Termination.** If the Plan terminates, Empower may utilize any procedures promulgated by the U.S. Department of Labor or other applicable regulatory agencies for abandoned or orphaned plans, including the facilitation of distributions to payees and any other required plan termination requirements.

## **12. Miscellaneous**

**12.1. Affiliates & Agents.** Plan Sponsor acknowledges and agrees that Empower may utilize the services of affiliates, agents, vendors and suppliers selected by Empower. Empower's use of any such

party will not relieve Empower of its obligations hereunder, and Empower shall at all times remain liable for the performance of the Services hereunder.

**12.2. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Neither Empower nor its personnel shall be considered employees of Plan Sponsor for any purpose. None of the provisions of this Agreement shall be construed to create an agency, partnership or joint venture relationship between the parties or the partners, officers, members or employees of the other party by virtue of either this Agreement or actions taken pursuant to this Agreement.

**12.3. No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties hereto and their affiliates and is not intended to confer any rights or remedies upon any other person.

**12.4. Assignment.** This Agreement shall be binding upon and inure to the benefit of each of the parties, their affiliates, successors and permitted assigns; provided, however, that neither party may assign its rights or obligations hereunder without the other party's prior written consent. Notwithstanding the foregoing, a party may assign this Agreement in connection with: (i) the sale of substantially all of its assets or the assets of any business unit to an entity that assumes the assignor's obligations under this Agreement; (ii) a merger, acquisition or divestiture; and/or (iii) a transfer to a parent or affiliate, in each case without the other party's consent.

**12.5. Entire Agreement.** This Agreement, including all Exhibits, Schedules, notices and attachments, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior drafts, agreements, negotiations and proposals, written or verbal, relating to the Services. Except as otherwise provided herein, this Agreement may be modified only by an Amendment signed by authorized representatives of each party. Notwithstanding the foregoing, Empower may unilaterally amend the Agreement in order to comply with applicable laws, to add or enhance the Services, or to update the method of providing the Services, by providing written notice to Plan Sponsor at least 30 days in advance of the effective date of such change. If applicable, service elections or modifications that alter the terms of the Schedule of Services or the Fee Schedule may be reflected in a new version of such document, which will be produced by Empower and made available to Employer, and which shall replace all prior versions of such document(s). Any Empower notices or policies that are attached to or referenced in this Agreement may be modified by Empower at any time. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provision hereof and no waiver shall be effective unless made in writing.

**12.6. Governing Law; Waiver of Jury Trial.** This Agreement shall be construed and enforced in accordance with and governed by the laws of the state of the Plan Sponsor's residence, without regard to conflict of law principles, and any claim arising under or related to this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located in the Plan Sponsor's state of residence. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim arising out of, connected with, related to or incidental to this Agreement to the fullest extent permitted by law. Plan Sponsor agrees that to the extent it can assert sovereign immunity under applicable law, it waives such sovereign immunity to the extent necessary to permit Empower to enforce the terms and conditions of this Agreement under the dispute resolution mechanism specified herein. Plan Sponsor further agrees to not assert sovereign immunity as a defense to any claim or action that Empower may bring relating to this Agreement.

**12.7. Unclaimed Property.** With respect to any checks issued from Plan assets during the term of this Agreement, Plan Sponsor directs Empower to follow state unclaimed property regulations

and escheat such assets to the Plan's or the Participant's state of residence based on Empower's records. However, Plan Sponsor may direct Empower, in writing, to treat the Plan's uncashed checks in a different manner. Plan Sponsor is solely responsible for determining the appropriate handling of uncashed checks and any unclaimed property under the applicable federal and state laws including the determination and handling of amounts related to lost Participants.

**12.8. Website Services.** Empower will, as part of the Services, host, maintain and make certain information available to Plan Sponsor and Participants on a website or websites (the "Website Services"). Plan Sponsor will not use or permit any use of the Website Services (i) in any unlawful or illegal manner; (ii) in any way that could impair the Website Services or any other party's use thereof; or (iii) to distribute, sell, resell, license or transfer any of Plan Sponsor's rights to access or use the Website Services or make the Website Services available to any third party. Any user credentials, including user identification and passwords, established by Plan Sponsor and its delegates or any Participant (each a "**User ID**") is issued to a specific user and may not be shared or used by any individual other than that user. Plan Sponsor will be responsible for the compliance by its users with the applicable terms of this Section. Empower may terminate the User ID, or portions thereof, for any user involved in a breach of this Section. Plan Sponsor acknowledges that transmissions through the internet are inherently unsecure, that virus protection software, firewalls and other security measures are not foolproof, and that the Website Services and their content are not invulnerable to fraud or hacking. In addition, Plan Sponsor acknowledges that Empower shall from time to time perform scheduled or emergency repairs, maintenance, and disaster recovery testing on the websites, and that such activity, or other circumstances beyond Empower's reasonable control, may cause the Website Services to be unavailable or delayed. Plan Sponsor agrees that Empower shall not be liable for any such delays or downtime in the Website Services, or for any virus or malicious access to the Website Services by third parties, provided that Empower has implemented and maintained security features with respect to the Website Services that are consistent with this Agreement and commercially reasonable industry standards.

**12.9. Force Majeure.** Neither Empower nor Plan Sponsor shall be liable to the other for any and all losses, damages, costs, charges, counsel fees, payments, expenses or liability due to delay or interruption in performing its obligations hereunder, and without the fault or negligence of such party, due to causes or conditions beyond its control, including, without limitation, labor disputes, riots, war and war-like operations including acts of terrorism, pandemics, epidemics, explosions, sabotage, acts of God, civil disturbance, governmental restriction, transportation problems, failure of power or other utilities including phones, internet disruptions, fire or other casualty, natural disasters, or disruptions in orderly trading on any relevant exchange or market, or any other cause that is beyond the reasonable control of either party.

**12.10. Severability.** The provisions of this Agreement are severable, and if for any reason a clause, sentence, paragraph or provision of this Agreement is determined to be invalid by a court or federal or state agency, board or commission having jurisdiction over the subject matter thereof, such invalidity will not affect other provisions of this Agreement that can be given effect without the invalid provision.

**12.11. Notices.** All formal notices required by this Agreement will be in writing and shall be sent to Empower as set forth below and to the most current Plan Sponsor and trustee address on file with Empower. All notices sent shall be effective upon receipt.

Notice To Empower:  
Empower Retirement, LLC  
Empower Retirement Division  
8515 East Orchard Road



Greenwood Village, CO 80111

With a copy to:  
Empower Retirement, LLC  
8515 East Orchard Road  
Greenwood Village, CO 80111  
Attn: General Counsel

**12.12. Headings; Defined Terms; Counterparts.** Section headings used in this Agreement are intended for reference purposes only and shall not affect the interpretation of this Agreement. Unless the context requires otherwise, capitalized terms defined in this Agreement have the meanings set forth herein for all purposes of this Agreement including any Schedules or Exhibits. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The parties' execution and delivery of this Agreement by facsimile, email, or electronic copies shall have the same force and effect as execution and delivery of an original.

**12.13. Survival.** The provisions of the following sections shall survive the termination of this Agreement: Fees & Charges; Confidential Information; Privacy & Data Security; Record Retention; Intellectual Property Rights; Indemnification; Limitation of Liability; Dispute Resolution; Governing Law; Waiver of Jury Trial; Unclaimed Property; Website Services; Survival; Severability; No Third-Party Beneficiaries; and any other section that would by its context be reasonably expected to survive termination.

**12.14. Signatures/Corporate Authenticity.** Plan Sponsor has been provided a signature page ("Signature Page") that applies to this Agreement as well as to certain other documents, which are listed thereon. By signing the Signature Page, the parties certify that they have read and understood this Agreement, that they agree to be bound by its terms, and that they have the authority to sign it. This Agreement is not binding on either party until signed by both parties.

**12.15. Electronic Signatures.** Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures reasonably believed to be genuine on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

[This page left intentionally blank.]

## **BUSINESS CONTINUITY PLAN NOTICE**

Empower Financial Services, Inc. ("Empower"), a subsidiary of Empower Annuity Insurance Company of America and affiliate of Empower Life & Annuity Insurance Company of New York\* and Empower Retirement, LLC, maintains a comprehensive business continuity plan designed to respond reasonably and effectively to events that lead to significant business disruption, such as natural disasters, power outages, or other events of varying scope. This plan defines critical functions and systems, alternate work locations, vital books and records, and staff resources, and provides for the continuation of business operations with minimal impact, depending on the severity and scope of the disruption. The plan is reviewed and tested no less than once annually to ensure that the information in the plan is kept current and that documented recovery and continuity strategies adequately support its business operations. Of utmost importance to the plan is the ability for customers to maintain access to securities accounts and assets in those accounts.

In the event that one of the contact centers or back office operation facilities becomes unavailable for any reason, calls would be re-routed to one of the firm's alternative contact center or operations facilities.

In the event of a significant business disruption to the primary office and/or data center, access to customer accounts will be provided via the Company's Web site and voice response system, operated from an alternative data center. Customer service will continue to be provided by re-routing telephone calls to a contact center located in one or more alternative sites located outside of the region. Secure work from home solutions are available for all staff.

While no contingency plan can eliminate the risk of business interruption, or prevent temporary delays with account access, the firm's continuity plan is intended to mitigate all reasonable risk and resume critical business operations within 24 hours or the next business day, whichever is later.

\* Record keeping and administrative services are provided by Empower Retirement, LLC, and in New York, Empower Life & Annuity Insurance Company of New York, or one of its subsidiaries or affiliates. Securities offered in your account may be offered through another broker/dealer firm other than Empower Financial Services, Inc., a wholly owned subsidiary of Empower Annuity Insurance Company of America. Please contact your investment provider for more information if needed.

This disclosure is subject to modification at any time. The most current version of this disclosure can be found on the Company's website or can be obtained by requesting a written copy by mail.

## **Procedures for Complying with Fund Company**

### **Market Timing and Excessive Trading**

The prospectuses, policies and/or procedures of certain fund companies require retirement plan providers offering their fund(s) to agree to restrict market timing and/or excessive trading ("prohibited trading") in their funds. The following procedures describe how we, as your recordkeeper, will comply with fund company instructions designed to prevent or minimize prohibited trading.

Various fund companies instruct intermediaries to perform standardized trade monitoring while others perform their own periodic monitoring and request trading reports when they suspect that an individual is engaging in prohibited trading. If an individual's trading activity is determined to constitute prohibited trading, as defined by the applicable fund company, the individual will be notified that a trading restriction will be implemented if prohibited trading does not cease. (Some funds may require that trading restrictions be implemented immediately without warning, in which case notice of the restriction will be provided to the individual and plan, if applicable). If the individual continues to engage in prohibited trading, the individual will be restricted from making transfers into the identified fund(s) for a specified time period, as determined by the applicable fund company. Individuals are always permitted to make transfers out of the identified fund(s) to other available investment options. When the fund company's restriction period has been met, the individual will automatically be allowed to resume transfers into the identified fund(s).

Additionally, if prohibited trading persists, the fund company may reject all trades initiated by the plan, including trades of individuals who have not engaged in prohibited trading.

Note: certain plan sponsors have or may elect to implement plan level restrictions to prevent or minimize individual prohibited trading. To the extent that such procedures are effective, we may not receive requests for information from the fund companies or requests to implement the restrictions described above.

10/16/07

PRIVACY NOTICE  
REV 5/2022

<b>FACTS</b>	What does Empower Retirement, LLC (Empower) do with your personal information?
<b>WHY?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share and protect your personal information. Please read this notice carefully to understand what we do.
<b>WHAT?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and account balances</li> <li>• Retirement assets and transaction history</li> <li>• Employment information and income</li> </ul> <p>When you are no longer our customer, we continue to share your information as described in this notice.</p>
<b>HOW?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information, the reasons Empower chooses to share and whether you can limit this sharing.

REASONS WE CAN SHARE YOUR PERSONAL INFORMATION	DOES EMPOWER SHARE?	CAN YOU LIMIT THIS SHARING?
<b>For our everyday business purposes –</b> Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
<b>For our marketing purposes –</b> To offer our products and services to you	Yes	No
<b>For joint marketing with other financial companies</b>	No	We don't share
<b>For our affiliates' everyday business purposes –</b> Information about your transactions and experiences	Yes	No
<b>For our affiliates' everyday business purposes –</b> Information about your creditworthiness	No	We don't share
<b>For nonaffiliates to market to you</b>	No	We don't share
<b>QUESTIONS?</b> Call toll-free at 855-756-4738 or go to <a href="https://empower.com/privacy">empower.com/privacy</a>		

WHO WE ARE	
<b>Who is providing this notice?</b>	Empower and its affiliates. A list of companies is provided at the end of this notice.
WHAT WE DO	
<b>How does Empower protect my personal information?</b>	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include physical, technical and procedural safeguards, such as building and system security and personnel training.
<b>How does Empower collect my personal information?</b>	<p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> <li>• Provide account information or apply for a loan</li> <li>• Enter into an investment advisory contract or seek advice about your investments</li> <li>• Tell us about your investment or retirement portfolio</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates or other companies.</p>
<b>Why can't I limit all sharing?</b>	<p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes – information about your credit worthiness</li> <li>• Affiliates from using your information to market you</li> <li>• Sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing</p>
DEFINITIONS	
<b>Affiliates</b>	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies with the Empower, Great-West Life &amp; Annuity or Great-West names, as listed below, and other financial companies such as Advised Assets Group, LLC and GWLA</i></li> </ul>
<b>Nonaffiliates</b>	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Empower does not share with nonaffiliates so they can market to you.</i></li> </ul>
<b>Joint marketing</b>	<p>A formal agreement between nonaffiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Empower does not jointly market.</i></li> </ul>
WHO IS PROVIDING THIS NOTICE?	
<p>Empower Retirement, LLC; Great-West Life &amp; Annuity Insurance Company; The Great-West Life Assurance Company (U.S. operations); Great-West Life &amp; Annuity Insurance Company of New York; Great-West Financial Retirement Plan Services, LLC; Advised Assets Group, LLC; GWFS Equities, Inc.; The Canada Life Assurance Company (U.S. operations); Empower Retirement, LLC; Great-West Life &amp; Annuity Insurance Company of South Carolina; Great-West Capital Management, LLC; Great-West Funds, Inc.; and Great-West Trust Company, LLC; Prudential Insurance and Annuity Company; Prudential Bank &amp; Trust, FSB; Global Portfolio Strategies, Inc.; TBG Insurance Services Corporation; MC Insurance Agency Services, LLC; Mullin TBG Insurance Agency Services, LLC; and COMOSA REIT Corp.</p>	
GEN-FLY-WF-1831220-0622	

### **Schedule of Services**

#### **Services provided by Empower**

- A. Recordkeeping Services - Core Services.** The following services are core recordkeeping and communication services available to all plans.

#### ***Implementation Services:***

##### **Empower will provide the following conversion services prior to the receipt of assets:**

- Gathering initial plan information;
- Coordinating conversion assets from a prior service provider;
- Reconciling plan assets;
- Loading records onto the recordkeeping system; and
- Assisting Employer's payroll office or payroll vendor to process the next scheduled payroll to Empower on or after the implementation period.

#### ***Implementation Period:***

##### **ACH Automation:**

Plan Sponsor Directs Empower to accept a transfer of Plan records that reflects Participant ACH banking information as provided by the Plan Sponsor or by the Plan's prior service provider, without any further review and validation of the ACH information provided.

In Directing Empower to accept a transfer of existing Participant ACH banking information to its recordkeeping system, the Plan Sponsor certifies the following:

- The Participant has previously authorized the Plan to process an ACH debit and/or credit of the Participant's account at the designated financial institution ("Account") in connection with all applicable Plan transactions and has authorized the designated financial institution, in the form of electronic fund transfer, to credit and/or debit the same to such Account.
- The Participant has not revoked the ACH authorization for the Account prior to the transfer and the Plan shall treat the Participant's ACH authorization for the Account as remaining in effect until Empower receives a notice of cancellation from the Participant.
- Plan Sponsor Directs Empower to administer all ACH transactions for all Plan purposes under the terms of Empower's separate ACH Agreement, which the Plan Sponsor has adopted as the Plan's terms and conditions governing all applicable ACH transactions processed on the Empower platform.

##### **Merging Plan:**

An existing Employer Plan that is converting to Empower will be subject to an implementation period to facilitate the movement of Participant, Alternate Payee and Beneficiary records and Plan assets from the prior record keeper and/or trustee to Empower.

***Blackout Notice Services:*****Initial Blackout Notices:**

Empower will assist in the preparation of the initial transition blackout notice and will provide the blackout notice to the Plan Sponsor for distribution to Participants, Alternate Payees and Beneficiaries, as requested by the Plan Sponsor. A “Blackout Period” is defined as any period of more than three consecutive Business Days during which the Participant, Beneficiaries and Alternate Payees are prohibited or restricted from exercising certain otherwise available rights, such as directing investment of their accounts, obtaining loans or making distributions. During the implementation period, Plan Sponsor’s prior record keeper’s improper reporting or incomplete transferred records may impact the blackout period end date. Such an impact may cause an extension of the blackout period, resulting in a second notice. Empower may agree to provide this additional blackout notice if the parties agree in writing.

**Future Blackout Notices:**

If mutually agreed to in writing, Empower may provide blackout notices to the Plan Sponsor for distribution to Participants, Alternate Payees and Beneficiaries for fund or other ongoing plan changes that result in a period of more than three (3) consecutive Business Days where the Participant, Alternate Payee and Beneficiary are restricted from exercising certain otherwise available rights such as directing investments of their accounts, obtaining loans or taking distributions.

***Establishment of Accounts:*****1. Participant Accounts:**

- a. Participant accounts shall be established and maintained for each Employer-approved new enrollee and each employee or former employee with a balance in the plan (“Participant”). Each Participant’s account record shall consist of the Participant’s name, Social Security number (“SSN”), mailing address, date of birth, and any such other information as required from time to time for provision of services to the Plan.
- b. On and after the receipt of assets, Empower shall maintain a record of each Participant’s investment option allocation and transaction received in good order to the recordkeeping system, including:
  - (i) Current and historical investment allocations and percentages for each available investment option.
  - (ii) Current account balances of each Participant in each available investment option and money source.
  - (iii) An accounting of each transaction made to each available investment option and money source.
- c. Empower shall provide each Participant with access to his or her account and investment information via a Web site, the voice response unit (“VRU”) and the Client Service Center domestic toll-free number and international toll number. Participants may use these services to change allocations of future deferrals and/or initiate transfers between and among investment options available under the Plan(s).



- d. Empower shall make available to each Participant a quarterly account statement in Empower's standard format.

Additionally, confirmation will be provided of every completed change requested by a Participant. Participants will also have access to their account activity via the VRU and the Web site.

- e. If applicable, Empower will include vesting information on Participant statements, provided that Plan Sponsor provides Empower with all vesting information required under applicable law.

## **2. Beneficiary Accounts**

If elected by the Beneficiary(ies) in good order and in a manner satisfactory to Empower, Empower will establish a Beneficiary account pursuant to the terms of the Plan requirements in effect on the date of establishment.

### ***Contribution Processing:***

**Receipt and Investment of Contributions.** Empower will credit contributions for allocation to Participant accounts in accordance with direction from the Plan Sponsor and as set forth below. Empower will allocate or otherwise apply forfeitures under the Plan accounts, if any, as directed by the Plan Sponsor. Empower will pass directions to invest such contributions, and to execute appropriate transactions related to forfeitures, to the Plan trustee or custodian in accordance with investment directions of the Plan Sponsor.

**Timing Requirements for Contributions Funded via ACH, Check or Wire.** Contributions received by Empower in good order prior to the close of any Business Day will be processed effective that Business Day, at that Business Day's net asset / unit values. Contributions not received by Empower prior to the close of Business Day will be processed effective the next Business Day.

### ***Distributions and Forfeitures:***

Empower will create and maintain a record of any distribution, including the distribution reason, from the Plan made with respect to each Payee. If applicable, Empower will provide a Code §402(f) Notice of Special Tax Rules on Distributions to the Payee at the time of distribution. Unless otherwise agreed to in writing, Empower is not responsible for issuing any other Participant, Alternate Payee or Beneficiary notice required by the Code, as applicable. Distributions will be made within two (2) Business Days if Empower receives instructions in good order.

## **1. Participant Distributions**

Empower will make distributions to Participants pursuant to the Plan Sponsor's and Participant's distribution requests received in good order.

## **2. Beneficiary Distributions**

Plan Sponsor instructs Empower to pay the claimant listed on the Death Benefit Claim form signed by the Plan Sponsor unless there is a conflict between the designation on file with

Empower and the claimant listed on the Death Benefit Claim form. In the event of a conflict, the Plan Sponsor will determine which Beneficiary designation will control.

### **3. Forfeiture Processing**

If applicable, Empower will calculate forfeiture amounts based upon the Participant's vesting and will place the forfeiture amounts in a separate Plan account as instructed by the Plan Sponsor.

### **4. Participant Termination Services**

If the services described in this subsection is made available to the Plan Sponsor by Empower, and if the Plan provides for de minimis Participant accounts to be distributed after termination, then the Plan Sponsor instructs Empower to distribute communication material to the terminated Participant informing them of their distribution options. Such information includes communicating to the Participant that if he/she does not take a distribution of the account that it will be automatically rolled over into the Plan Sponsor-elected de minimis IRA. Plan Sponsor also instructs Empower to automatically roll any monies remaining in the Plan after a certain period of time following these communications to the rollover provider selected by the Plan Sponsor.

Plan Sponsor permits Empower to send out communication material to terminated participants informing them of their distribution options.

#### ***Transfers:***

Participant, Alternate Payee and Beneficiary-initiated transfers will be processed and effective the Business Day they are received at Empower's home office, if received before the close of the New York Stock Exchange (typically 4:00 p.m. Eastern Time or such earlier time as may have to be implemented to comply with any applicable future law, rule or regulation). If transfers are received at Empower's home office after the close of the New York Stock Exchange, transfers will be processed and be effective the next Business Day (or such earlier time as may have to be implemented to comply with any applicable future law, rule or regulation).

#### ***Tax Reporting of Distributions:***

1. Plan Sponsor appoints Empower as its agent to perform income tax withholding and reporting for all Payee distributions and agrees to provide all necessary information needed by Empower to perform these services.
2. Empower shall deposit the income tax withheld with the Internal Revenue Service ("IRS") and other appropriate governmental entities, as applicable, on or before the applicable due dates for such remittances.
3. Empower will complete necessary tax reporting forms for Payee distributions, file the tax reporting forms with the IRS and send copies to the Payee.

#### ***Plan Loans:***

Empower will process Participant account reduction loans pursuant to the Plan's loan policy and Empower's loan procedures, as amended from time to time. Plan Sponsor agrees to provide an authorization for all Participant loan requests.

***Ongoing Plan Resources:***

1. Empower will provide the Plan Sponsor access to Plan information and electronic approval capabilities via the PSC.
2. Empower will provide the Plan Sponsor access to a Plan Services Representative for assistance with plan questions.
3. Empower shall provide periodic Employer Plan Reports in Empower's standard format.

***Participant Rollover Contributions:***

Plan Sponsor directs Empower to process Participant rollover contributions received in good order pursuant to the Participant's direction in accordance with procedures provided by Empower to the Plan Sponsor and without any further Plan Sponsor approval or authorization.

***Communication and Education (subject to applicable law):***

1. Standard forms, notices and other information necessary for the service provided to the Plan will be provided to Plan Sponsor and to Participants via the PSC and/or through enrollment meetings.
2. Empower will provide investment education and communication materials, which may include education and planning tools, newsletters, brochures, or other materials.

***Distribution Education Services:***

Empower or its affiliates will make retirement education consultants available to Participants to provide distribution education services and may contact Participants who are eligible to receive distributions from the Plan to provide information regarding distribution options under the Plan including rollover services and products offered by Empower.

***Financial Services & Tools:***

Empower will provide employee plan and investment education and communications materials, including education and planning tools.

**1. Empower Participant Experience**

With certain exceptions, Empower provides Participants with an estimated hypothetical monthly retirement income and goal based on a number of factors including the Participant's Plan assets, Plan contribution rates and compensation data on the Participant website.

**2. Health Cost Estimator**

With certain exceptions, Empower will provide Participants access to Empower's Health Cost Estimator (as defined below) on the Participant website. Health Cost Estimator provides Participants with estimated monthly health care expenses based on retirement age and certain personal health condition information provided to Empower by Participants ("Health Cost Estimator"). All health care costs and projections are provided by an unrelated third party vendor. Plan Sponsor agrees that the Health Insurance Portability and Accountability Act of 1996 does not apply to any personal health condition information provided to Empower by Participants. Plan Sponsor also acknowledges that such health condition information is owned

by the Participant and not the Plan Sponsor and that Empower will not disclose any health condition information provided to Empower by Participants to Plan Sponsor without the Participant's consent. Empower agrees that, except as provided in the preceding sentence, it will otherwise treat such health condition information as NPI in accordance with the Section entitled Confidentiality & Data Privacy in this Agreement. Plan Sponsor further agrees not to use any information it obtains through Health Cost Estimator other than for Plan purposes, contribution rates and compensation data.

### **3. Personalized Participant Communications**

Except as otherwise agreed by the parties, Empower will send certain action-oriented Participant education communications according to a Participant's behavior, preferences, and information. Messaging will include: (i) information about the tools and services available in the Plan and what actions a Participant may take to build individual savings, and will address topics such as enrollment, beneficiary designation, contribution increases, asset allocation, catch-up contributions and more; (ii) general financial topics that a Participant may find helpful while striving to reach financial and savings goals, and will include budgeting, debt management, investing basics, emergency funds, National Retirement Security Week and more; and (iii) the opportunity to view additional options available that may provide a Participant with a more comprehensive savings strategy, and will include information about healthcare savings accounts, estate planning, college saving and more. A Participant must have an email address on file with Empower in order to receive such communications via email. The Participant can opt out of receiving these emails at any time as required by applicable law.

#### ***My Financial Path:***

Empower's financial wellness program provides Participants with tools and services to review overall financial wellness including tools that allow Participants to complete a personalized online assessment, the output of which provides the user with ideas on the next steps they can take to address financial concerns they identified when completing the assessment and educational resources to learn more about financial topics of interest, including a learning center with educational content on certain financial wellness topics. Empower or its affiliates may make retirement education consultants available to Participants to provide financial wellness consultations and may contact Participants to offer financial wellness consultations. Consultations involve topics such as (but not limited to): budgeting, saving, student debt, debt prioritization, life insurance, managing investments and consolidating assets. Empower's financial wellness tools, services and consultations may include information on financial products and services made available by Empower or third-party providers. Participants may pay fees if they choose certain products. Empower may receive fees and other payments from the products selected by Participants. More information on the applicable financial wellness products and the fees and payments that may be received by Empower is available upon request.

#### ***Participant Fiduciary Services:***

Empower may offer investment advice and provide recommendations as a fiduciary under applicable law to Participants on certain Plan transactions, such as point-in-time investment advice on designated investment alternatives, investment advisory services available under the Plan, and recommendations on distribution and rollover options, which may include services and products offered by Empower and its affiliates. When Empower acts as a fiduciary, it will do so in the best interest of the Participants. Empower will provide such fiduciary services pursuant to applicable law.

- B. Elective Services.** The following elective services are available upon Plan Sponsor meeting certain requirements. Additional fees may apply.

**1. Eligibility Determination**

Plan Sponsor can instruct Empower to calculate Participant eligibility based on Plan Sponsor's instructions as to the Plan's eligibility requirements. Plan Sponsor instructs Empower to reject the enrollment of any Participant determined to be ineligible. For each ineligible determination, Plan Sponsor instructs Empower to notify the Participant to contact the Plan Sponsor if he or she wishes to appeal the determination.

**2. Online Enrollment**

Plan Sponsor can instruct and authorize Empower to allow online Participant enrollment. Plan Sponsor instructs Empower to issue a Personal Identification Number ("PIN") to every eligible employee, allowing enrollment in the Plan through the Web site and VRU.

**3. Automatic Enrollment**

Empower can perform automatic enrollment and deferral increase services, and create and mail initial and annual automatic enrollment notices, as elected by Plan Sponsor in good order and in a form acceptable to Empower.

**4. Deferral Processing**

Plan Sponsor can instruct and authorize Empower to provide for deferral processing by the Plan Sponsor via the Web site. Participants may access the Web site to input the required payroll deferral amount/percentage information. Plan Sponsor acknowledges that the Deferral Processing service described in this Section shall only be available as long as Empower is the sole record keeper for the Plan.

If Plan Sponsor uses Empower's Automatic Enrollment services, Deferral Processing does not require separate election.

**5. Vesting Services**

Plan Sponsor needs to provide Empower all information necessary to perform vesting services. Employer hereby instructs and authorizes Empower to:

- a.** Maintain each Participant's vesting percentage on Empower's recordkeeping system;
- b.** Display the Participant's vested account balance on the quarterly statements; and
- c.** Calculate and process withdrawals and/or loans according to the vested percentage.

**6. Loan Approval**

Plan Sponsor can instruct and authorize Empower to process, without further Plan Sponsor approval, Participant loan requests submitted in a manner acceptable to Empower. If the Plan is subject to spousal consent requirements, loans may only be initiated by paper forms and not online or by VRU. Plan Sponsor agrees to specifically authorize each principal residence loan request.

**7. Distribution Processing**

Plan Sponsor can instruct and authorize Empower to process, without further Plan Sponsor approval, requests for distributions in good order and in a manner acceptable to Empower. If Plan Sponsor does not provide the Participant's termination date or other required information, Plan Sponsor instructs Empower to route the request to Plan Sponsor for approval before processing the distribution.

#### **8. In-Service Distributions at Age 59½**

Plan Sponsor can instruct and authorize Empower to process, without further Plan Sponsor approval, Participant age 59½ in-service distribution requests received in good order and in a manner acceptable to Empower. If the Participant's birth date information has not been provided, or if there is a discrepancy between the birth date on the system and the birth date on the form, Empower is instructed to rely on the birth date specified by the Participant on the form.

#### **9. Voluntary In-Service DeMinimus Distributions (for Governmental 457(b) Plans Only)**

Plan Sponsor can instruct and authorize Empower to process, without further Plan Sponsor approval, Participant initiated DeMinimus distribution requests received in good order and in a manner acceptable to Empower. If vesting is applicable and the Participant's birth date information has not been provided, or if there is a discrepancy between the birth date on the system and the birth date on the form, Empower is instructed to rely on the birth date specified by the Participant form.

#### **10. Automated Mandatory Distributions (De Minimis)**

Empower can perform automated mandatory distributions of small account balances, as elected by Plan Sponsor in good order and in a form acceptable to Empower.

#### **11. Required Minimum Distributions (RMDs)**

Plan Sponsor can instruct Empower to provide a notice to Participants who, based on Plan Sponsor records reflected on Empower's recordkeeping platform, may be RMD eligible. If the Participant does not timely provide an election for the RMD as described in the notice, the Plan Sponsor acknowledges and agrees that it must provide timely direction to Empower with respect to processing any RMD payments prior to the regulatory deadline. Empower will process RMDs upon receipt of a Participant or Plan Sponsor request in good order.

#### **12. Beneficiary Record Keeping**

If Empower is and remains the sole record keeper for the Plan during the term of this Agreement, Plan Sponsor can instruct and authorize Empower to accept, maintain and file, without Plan Sponsor's signature, Beneficiary Designation forms received by Empower in good order and in a manner acceptable to Empower. Upon request, Plan Sponsor agrees to provide Empower with any and all Beneficiary information filed with the Plan by the Participant prior to the Effective Date of this Agreement.

If the spousal consent rules apply, Plan Sponsor shall provide Empower with instructions as to the portion of the Participant account for which a Beneficiary may be designated without spousal consent under the Plan. Plan Sponsor instructs Empower to rely on the marital status specified by the Participant on the Beneficiary Designation form and to obtain spousal consent, when applicable.



### **13. Investment Advisory-Related Services**

If the Plan Sponsor meets the relevant underwriting and other requirements, Empower Advisory Group, LLC (“EAG”), a federally registered investment adviser and wholly owned subsidiary of Empower Annuity Insurance Company of America (“EAIC”), may offer fund performance data and/or similar services regarding the investment options in the Plan through the Plan's recordkeeping and administrative relationship with Empower.

EAG, may separately offer Empower Retirement Advisory Services (Online Investment Guidance, Online Investment Advice and Managed Account service) to the Participants in the Plan through the Plan's recordkeeping and administrative relationship with Empower. Plan Sponsor may instruct EAG to make Empower Retirement Advisory Services available to Plan Participants in accordance with the terms and conditions of the Empower Retirement Advisory Services Agreement between EAG and Plan Sponsor.

### **14. Missing Participant Administrative Services**

Plan Sponsor is solely responsible for identifying and locating missing Participants. Upon request by Plan Sponsor, Empower will provide reports or other information to the Plan Sponsor with respect to Participants with undeliverable addresses as reflected in Empower's records. Also at Plan Sponsor's request, Empower will provide a description of administrative services and associated fees, as updated from time to time, to assist the Plan Sponsor with identifying and locating missing Participants and reissuing benefit payments to Participants. The administrative services may include performing Participant address searches using a commercial locator service, updating Participant address records and attempting to contact Participants using certified U.S. mail. Plan Sponsor may select such services and agree to the associated fees via a separate letter of direction.

### **15. Empower Health Reimbursement Account.**

Empower has partnered with a third-party custodian and administrator (“Service Provider”) to provide an integrated end-to-end health reimbursement account solution for employers and their employees (“Empower HRA”). The Service Provider is the custodian and administrator of the Empower HRA, and the Service Provider and Empower will share health reimbursement account (“HRA”) information as necessary to streamline the user experience. In no event will Empower receive Health Insurance Portability and Accountability Act (“HIPAA”) protected information from the Service Provider.

The specific services, available based on Plan type, that may be provided by Service Provider as Directed by Employer can include: (i) prepare documentation for the Plan in accordance with the Code or applicable law; (ii) prepare trust documentation for the Plan; (iii) administrative duties, as applicable; (iv) Plan amendments; (v) perform a discrimination test annually; (vi) summary of benefit coverage, as needed; (vii) prepare Form 990 on an annual basis for filing; (viii) prepare and submit Form 5500 to electronic filing service for filing; and (ix) provide certain COBRA administration services.

Changes to HRA contribution amounts may be made directly between the Service Provider and Plan Sponsor (“Employer” for this Section). Additionally, Employer can Direct Empower to take HRA contribution changes directly from employees and transmit such changes to the Employer. Empower will forward updated deferral information to Employer according to the schedule elected by Employer.

Service Provider will charge certain fees to Employer and Participants for the HRA Services, such fees are available upon request. On behalf of Service Provider, Empower will invoice Employer for any Employer listed fees and Participant listed fees will be deducted from their account balance.

#### ***QDRO Review and Determination Services.***

If the Plan accepts Qualified Domestic Relations Orders ("QDROs", Plan Sponsor directs and authorizes Empower to handle QDRO correspondence to and from involved parties and attorneys, including phone, email and other written communication. Plan Sponsor directs Empower to distribute QDRO Procedures and Model QDRO to involved parties and attorneys. Plan Sponsor directs Empower to place benefit holds as soon as administratively feasible pursuant to the Plan's adopted QDRO procedures. Plan Sponsor directs Empower to acknowledge receipt of a DRO and review the terms of the DRO to determine whether the order meets the requirements of applicable federal law and satisfies the requirements contained in the Plan's adopted QDRO Procedures. After review of a DRO, Plan Sponsor directs Empower to prepare and distribute approval, pre-approval or denial letters to the involved parties and attorneys. Plan Sponsor directs Empower to maintain QDRO records during the term of service, including Pre-Approval, Approval and/or rejection letter(s).

Plan Sponsor directs Empower to process the QDRO, without Plan Sponsor's further approval, by establishing a separate account for the alternate payee or making a lump sum distribution to the alternate payee. Plan Sponsor further directs Empower to process, without Plan Sponsor's further approval, all requests, received in good order and in a manner acceptable to Empower, for distributions from alternate payee accounts established before or after the Effective Date. Plan Sponsor directs Empower to calculate any alternate payee's QDRO amount based solely on the Participant's account records on Empower's recordkeeping system. Plan Sponsor further directs Empower to process, without the Plan Sponsor's further approval, distribution requests received in good order and in a manner acceptable to Empower, with respect to alternate payee accounts established before the Effective Date pursuant to QDROs previously processed by Empower. The Plan Sponsor directs Empower to calculate any alternate payee's QDRO amount based solely on the Participant's account records on Empower's recordkeeping system.

If the alternate payee's awarded share exceeds the value of the Participant's core investment account(s) under the Plan, Empower shall notify the Participant in writing to liquidate and transfer the necessary remaining sum from the SDB into the core investment options, to enable the processing of the QDRO. If the Participant fails to transfer the necessary amount within fifteen (15) Business Days of the date of the notification, and if the necessary amount is available in the SDB money market, Plan Sponsor directs Empower to transfer such amount into the Default Investment Option. If there are insufficient available funds in the SDB money market, Plan Sponsor directs Empower to notify the SDB provider to liquidate all of the Participant's SDB investments and to transfer the entire amount into the Default Investment Option.

For each qualified and processed QDRO, the Participant's portion of the fee will be deducted from the Participant's account balance, and the alternate payee's portion of the fee will be deducted from the alternate payee's account or from the lump sum distribution, as applicable.

#### ***Special Investment Options:***

##### **1. Self-Directed Brokerage Accounts**



Plan Sponsor can choose to offer a self-directed brokerage option (“SDB”). Plan Sponsor agrees to complete and execute all documents required to activate the SDB.

## **2. Life Insurance**

If, at the time of conversion, the Plan has existing life insurance policies, limited services may be available as described in Empower’s life insurance guidelines and policies, as updated from time to time. If Empower determines that such services will be offered, Empower will remit insurance premiums to the applicable life insurance provider pursuant to Plan Sponsor’s instructions as to the timing and manner of premium remittance. Plan Sponsor may be required to retain a third-party administrator to perform certain compliance and other services. Life insurance cannot be added to an existing Plan. Additional fees may apply.

### **C. Plan Document Services**

Empower will offer a volume submitter plan document, a standard summary plan description and plan document amendments required by changes in applicable laws and regulations. If Plan Sponsor declines to use Empower’s volume submitter plan document, it acknowledges that Empower will not be responsible for providing plan document updates or other plan document services as described in the Agreement.



**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY  
RECORDKEEPING SERVICES AGREEMENT ADDENDUM FOR  
457(b) PLAN ENHANCED PLAN SERVICES**

---

This Addendum to the Recordkeeping Service Agreement entered into between Empower and Employer describes certain services under which Empower will process Participant requests without obtaining additional Employer signatures or other specific approvals. In doing so, Empower will not exercise any fiduciary authority or make any discretionary determinations. Rather, this Addendum will act as a one-time instruction and approval by Employer for Empower to process all Participant requests that meet the stated criteria. In addition, Employer, and not Empower, is responsible for reviewing the Plan document to ensure compatibility with the services described in this Addendum.

In order to receive the services detailed in this Addendum, Employer must utilize the PSC and must provide all necessary information via an electronic payroll file. Employer must also provide any additional information or instructions as required by, and in a form acceptable to, Empower. In addition, in most cases, Empower must be the sole recordkeeper for the Plan. Services that involve the processing of distributions to Participants are not available if the Plan includes QJSA/QPSA provisions. If at any time Employer does not meet these general requirements, or does not meet the specific requirements of any service described in this Addendum, Empower will not be required to continue to provide such service.

Employer may elect one or more services by checking the corresponding boxes on the Enhanced Plan Services Election Form. Some services may have a corresponding fee; for further information, please refer to your Fee Schedule.

**1. Eligibility Determination Enrollment**

Employer hereby instructs Empower to calculate Participant eligibility based on Employer's instructions as to the Plan's eligibility requirements and on the Participant information provided by Employer. Employer instructs Empower to reject the enrollment of any Participant determined to be ineligible. For each ineligible determination, Employer instructs Empower to notify the Participant to contact Employer if he or she wishes to appeal the determination. Employer agrees to notify Empower at least thirty (30) days prior to any change in the Plan's eligibility requirements. Empower may discontinue this service if the Plan's new eligibility requirements are incompatible with Empower's requirements.

**2. Online Enrollment**

Employer hereby instructs and authorizes Empower to allow online enrollment. Once the electronic payroll file is transmitted, Employer instructs Empower to issue a Personal Identification Number to every eligible employee, allowing enrollment in the Plan through the website.

**3. Beneficiary Recordkeeping**

Employer affirms that the Plan allows web-initiated beneficiary designations. Employer hereby instructs and authorizes Empower to accept, maintain and file, without Employer's further approval, beneficiary designations received by Empower in good order and in a manner acceptable to Empower. Upon request, Employer agrees to provide Empower with any and all beneficiary information filed with the Plan by Participants prior to the Effective Date.



Employer shall provide Empower with instructions regarding any Plan requirements as to spousal consent for beneficiary designations. If there are any such requirements, Employer instructs Empower to rely on the marital status specified by the Participant on the beneficiary designation form, and to obtain spousal consent, when applicable. If a beneficiary designation requires spousal consent, such designation may be made only by paper form.

Unless Employer qualifies for and has elected the Beneficiary Confirmation for Death Benefit Claims service described below, Employer agrees to review and sign each death benefit claim form. In the event Employer submits a signed death benefit claim form for a claimant other than the beneficiary on file with Empower, if any, Empower will return the form to Employer for further instructions.

#### **4. Deferral Recordkeeping**

Employer hereby instructs and authorizes Empower to allow Participants to update their deferral elections via the website and voice response unit. Employer must provide initial deferral amounts for all Participants. Empower will forward updated deferral information to Employer according to the schedule elected by Employer.

#### **5. Loans**

Employer agrees that all loans shall be account reduction loans repaid by payroll deduction and shall be consistent with the loan policy and the procedures established by Empower from time to time. Employer instructs and authorizes Empower to process, without further Employer approval, Participant loan requests submitted through a form acceptable to Empower or through the Participant website. Principal residence loan requests must be submitted on a paper form with supporting documentation. In order to receive this service, Employer must also utilize Empower's Vesting service, if the Plan has a vesting schedule. If the Plan requires spousal consent for loans, the request must be submitted on a paper form.

#### **6. Vesting**

Employer instructs and authorizes Empower to:

1. Maintain each Participant's vesting percentage on Empower's recordkeeping system;
2. Display the Participant's vested account balance on the quarterly statements; and
3. Calculate and process withdrawals and/or loans according to the vested percentage on Empower's system.

The Plan's vesting schedule must be a standard graded or cliff schedule. If the Plan uses actual hours for calculating vesting, Employer must provide a "Years of Service" file to Empower, and must take all precautions not to duplicate hours on Empower's recordkeeping system.

#### **7. Distribution Processing for Severance of Employment or Retirement**

Employer hereby instructs and authorizes Empower to process, without Employer's further approval, Participant requests for distribution due to severance of employment for any reason other than death or disability, provided such requests are received in good order and in a manner acceptable to Empower.

In order to receive this service, Employer must also utilize Empower's Vesting service, if the Plan has a vesting schedule. If Employer has not provided a Participant's termination date or other required information, Employer instructs Empower to route the request to Employer for approval before processing the distribution. For spousal consent purposes, Employer



instructs Empower to rely on the marital status specified by the Participant in the request form.

#### **8. Voluntary In-Service DeMinimus Distributions (for Governmental 457(b) Plans Only)**

Employer hereby instructs and authorizes Empower to process, without Employer's further approval, Participant requests for voluntary in-service DeMinimus distributions, provided such requests are received in good order and in a manner acceptable to Empower.

In order to receive this service, Employer must also utilize Empower's Vesting service, if the Plan has a vesting schedule. If Employer has not provided the required information, Employer instructs Empower to route the request to Employer for approval before processing the distribution. For spousal consent purposes, Employer instructs Empower to rely on the marital status specified by the Participant in the request form.

#### **9. Required Minimum Distributions**

Empower will provide a notice and distribution form to each Participant attaining age 70 ½ or older in the current calendar year who has not taken a distribution for the current calendar year. The notice informs the Participant that required minimum distributions must begin no later than April 1 of the calendar year following the later of age 70 ½ or retirement.

Empower will not initiate such distributions, but will only process such distributions upon receipt of a Participant or Employer request in good order. Each year, Empower will provide a report to Employer listing Participants who are age 70 ½ or older and whether each has taken a distribution for the calendar year. In order to receive this service, Employer must also utilize Empower's Vesting service, if the Plan has a vesting schedule.

#### **10. Beneficiary Confirmation for Death Benefit Claims**

Employer hereby instructs and authorizes Empower to process, without Employer's further approval, death benefit claim forms received in good order from beneficiaries under the Plan. Empower is instructed to determine a Participant's beneficiary pursuant to the most recent beneficiary designation available to Empower. If a Participant has not designated a beneficiary, or if no designated beneficiary survives the Participant, Employer instructs Empower to forward the claim to Employer to determine the beneficiary before processing the distribution.

Death benefit claim forms submitted without complete information or without a certified copy of the deceased Participant's death certificate or other required documentation will not be processed, and the claimant will be notified of the deficiency. Processing will continue once Empower receives all required information and documentation in good order. Claimants determined not to be beneficiaries will be notified that their claims have been rejected.

Employer shall make determinations with respect to any competing or other questionable death benefit claims.

In order to receive this service, Employer must also utilize Empower's beneficiary recordkeeping and vesting tracking services, if applicable.

#### **11. Distributions Due to Unforeseeable Emergencies (for Governmental 457(b) Plans with \$50.0 Million Assets Only)**

Employer hereby instructs and authorizes Empower to process, without Employer's further approval, all Participant requests, received in good order and in a manner acceptable to Empower, for distributions due to unforeseeable emergency resulting in a severe financial hardship to the Participant or Beneficiary that cannot be alleviated by any other means



available to the Participant. Empower shall only process such requests if they meet the safe harbor defined in the Treasury Regulations, as described below. Employer further instructs Empower to rely on any and all representations made by a Participant in a request. The following situations shall qualify for a distribution under this section:

1. An illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Code §152, and for taxable years beginning on or after January 1, 2005, without regard to §152(b)(1), (b)(2) and (d)(1)(B));
2. Loss of the Participant's or Beneficiary's property due to casualty;
3. The following extraordinary and unforeseeable circumstances, if they arise as a result of events beyond the control of the Participant or Beneficiary:
  - (1) The imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence;
  - (2) The need to pay for medical expenses, including nonrefundable deductibles, as well as the cost of prescription drug medication; and
  - (3) The need to pay for the funeral expenses of a spouse or a dependent (as defined in Code §152, and for taxable years beginning on or after January 1, 2005, without regard to §152(b)(1), (b)(2) and (d)(1)(B)) of Participant or Beneficiary.

Except in extraordinary circumstances, the following are examples of situations that shall NOT qualify for a distribution under this section:

1. Purchase of real estate;
2. Payment of college tuition;
3. Unpaid rent or mortgage payments, except in the event of imminent foreclosure or eviction;
4. Unpaid utility bills;
5. Loan repayments;
6. Personal bankruptcy (except when resulting directly and solely from illness, casualty loss or other similar extraordinary and unforeseeable circumstances beyond the Participant's or Beneficiary's control);
7. Payment of taxes, interest or penalties; or
8. Marital separation or divorce.

Employer will make determinations with respect to any unforeseeable emergency distribution request that does not clearly fall within the guidelines set forth above. In the event of any changes to applicable law, including the safe harbor defined in the Treasury Regulations, Empower may revise this authorization and instruction from time to time and without further notice to Employer. This authorization and instruction shall remain in effect until revoked by either party.

In order to receive this service, Employer must also utilize Empower's beneficiary recordkeeping and deferral recordkeeping services.

For each Participant receiving an unforeseeable emergency distribution, Plan Sponsor instructs Empower to notify Employer to suspend elective deferrals for the period required by the Plan, if any. Empower is instructed to deny any request where the unforeseeable emergency event occurred prior to the Effective Date, or more than one year prior to the date the request is received. Empower may contact Employer for direction when unusual situations arise. For each request that is denied or that cannot be processed due to its failure to satisfy an unforeseeable emergency event, Employer instructs Empower to



notify the Participant to contact Employer if the Participant wishes to appeal the determination.

## **12. Incoming Rollovers**

Employer instructs and authorizes Empower to accept, without further Employer approval, Participant requests, from active employees of Employer, for incoming rollovers to the Plan that are received in good order and in a form acceptable to Empower. Employer instructs Empower to rely on a Participant's certification, without further investigation or action by Empower, that funds being rolled into the Plan constitute an eligible rollover distribution from an eligible retirement plan within the meaning of Code §402. If other than a direct rollover, the Participant must certify that the rollover is being made to the Plan within sixty (60) days of the date the Participant received the distribution from the prior eligible retirement plan. Employer hereby represents that the Plan accepts incoming rollovers from terminated as well as active employees.

Employer instructs Empower to reject any rollover request received without proper documentation and to return any rollover amounts accompanying such request.

Employer also instructs and authorizes Empower to accept Participant requests for incoming plan-to-plan transfers, if allowed under the Plan, under the same criteria as for rollovers, as described above.

## **13. Qualified Domestic Relations Orders (QDROs)**

Employer's approved model form of QDRO for the Plan is attached to this Agreement. Employer hereby instructs and authorizes Empower to treat as qualified each QDRO received by Empower in good order using the model QDRO form, or a form that is similar in all material respects to the model QDRO form. Employer instructs Empower to process the QDRO, without Employer's further approval, by establishing a separate account for the Alternate Payee or making a lump sum distribution to the Alternate Payee. Employer instructs Empower to send a copy of each QDRO confirmation or rejection letter to Employer.

Employer further instructs Empower to process, without Employer's further approval, all requests, received in good order and in a manner acceptable to Empower, for distributions from Alternate Payee accounts established before or after the Effective Date. Employer instructs Empower to calculate any Alternate Payee's QDRO amount based solely on the Participant's account records on Empower's recordkeeping system, and to reject any QDRO that specifies a valuation date prior to the Effective Date.

If the Plan includes a Self Directed Brokerage (SDB) account and the Alternate Payee's awarded share exceeds the value of the Participant's core investment account(s) under the Plan, Empower shall notify the Participant in writing to liquidate and transfer the necessary remaining sum from the SDB into the core investment options, to enable the processing of the QDRO. If the Participant fails to transfer the necessary amount within fifteen (15) Business Days of the date of the notification, and if the necessary amount is available in the SDB money market, Employer instructs Empower to transfer such amount into the Designated Investment Option. If there are insufficient available funds in the SDB money market, Employer instructs Empower to notify the SDB provider to liquidate all of the Participant's SDB investments and to transfer the entire amount into the Designated Investment Option.

If the the Plan has existing life insurance and in the event that the sum of all other Participant assets is insufficient to satisfy a QDRO, Employer instructs Empower to instruct



any existing life insurance provider under the Plan to surrender all or a portion of the Participant's life insurance policy and to transfer the proceeds to Empower for deposit into the Participant's account for subsequent QDRO processing. The amount of the surrender shall be no more than the amount necessary to satisfy the QDRO.

Employer agrees to make determinations with respect to orders received that are not materially similar to the model QDRO form for reasons other than inclusion of a valuation date that precedes the Effective Date.

**By signing the Agreements/Signature Adoption Page, Employer agrees to all of the above provisions for the services elected by Employer on the Enhanced Plan Services Election Form.**





**Employer's approved model form of Qualified Domestic Relations Order ("QDRO") For IRC 457(b) Plans**

This is a Model Qualified Domestic Relations Order ("Model QDRO") that has been preapproved by Empower for use by the Plan for outsourced Qualified Domestic Relations Order ("QDRO") services. Although this Model QDRO conforms with Federal QDRO requirements, it may need to be revised for state and/or local law and/or the specific requirements of the Plan itself. Further, the format of the Qualified Domestic Relations Order may vary depending upon the rules of the court in which the Participant obtains the Domestic Relations Order. For these reasons, this Model QDRO should be used only by the Plan after consultation with the Plan's counsel. Any revisions to the Model QDRO must be submitted to Empower for approval for use with our outsourced QDRO services. Nothing contained in this Model QDRO shall be construed as tax or legal advice.

It is recommended that a proposed version of this order be submitted to Empower with the body of the order filled in prior to entry of this order for purposes of your obtaining Empower's preapproval of the proposed order.

Proposed and entered orders should be remitted to the Plan Recordkeeper as follows:

Great-West Retirement Services®  
P.O. Box 173764  
Denver, CO 80217-3764  
Fax # (866) 745-5766

.....COURT, CITY OF ....., COUNTY OF .....

STATE OF .....

IN RE THE MARRIAGE OF:

.....

No. ....

Petitioner, )  
and )  
Respondent )

QUALIFIED DOMESTIC RELATIONS ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, based on the findings set forth below,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Parties:** The parties hereto were husband and wife, and a divorce action is in this Court at the above number. This Court has personal jurisdiction over the parties. The parties were married on \_\_\_\_\_ and divorced on \_\_\_\_\_.
2. **Participant Information:** The name, last known address, social security number and date of birth of the plan "Participant" are:

a. Name: \_\_\_\_\_





- b. SSN: \_\_\_\_\_  
c. Address: \_\_\_\_\_  
d. Date of Birth: \_\_\_\_\_

3. **Alternate Payee Information:** The name, last known address, social security number and date of birth of the "Alternate Payee" are:

- a. Name: \_\_\_\_\_  
b. SSN: \_\_\_\_\_  
c. Address: \_\_\_\_\_  
d. Date of Birth: \_\_\_\_\_

The Alternate Payee is the Participant's former spouse. The Alternate Payee shall have the duty to notify the Plan Administrator and/or Recordkeeper of any changes in mailing address subsequent to the entry of this Order.

4. **Plan Name.** The name of the Plan to which this Order applies is the \_\_\_\_\_ Plan, (hereafter referred to as "Plan").

Any changes in the Plan Administrator, Employer, or name of the Plan shall not affect Alternate Payee's rights as stipulated under this Order.

5. **Effect of this Order as a Qualified Domestic Relations Order:** This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer-sponsored defined contribution plan that is qualified under Section 401 of the Internal Revenue Code (the "Code"). It is intended to constitute a Qualified Domestic Relations Order ("QDRO") under Section 414(p) of the Code.

6. **Pursuant to State Domestic Relations Law:** This Order is entered pursuant to the authority granted in the applicable domestic relations laws of \_\_\_\_\_.

7. **Provisions of Marital Property Rights:** This Order relates to the provision of marital property rights as a result of the Order of Divorce between the Participant and the Alternate Payee.

8. **Amount of Alternate Payee's Benefit:** This Order assigns to the Alternate Payee an amount equal to [choose either option 8A1 or 8A2 below]:

8A1 \$\_\_\_\_\_ of the Participant's Total Vested Account Balance under the Plan as of the date this Order is processed.

OR

8A2 \$\_\_\_\_\_(dollars and cents) or \_\_\_\_% (percent) of the Participant's Total Vested Account Balance accumulated under the Plan as of \_\_\_\_\_ (or the closest valuation date thereto). The Alternate Payee's benefit herein awarded shall be credited with any investment income (or losses) attributable thereon from the aforesaid valuation date (or the closest valuation date thereto), until the date of transfer of the Alternate Payee's share to the Alternate Payee.

(Note to drafting attorney: The Plan's current recordkeeper is not able to determine the value of the Participant's account balance and any investment earnings and/or losses prior to \_\_\_\_\_. The parties will need to arrive at a dollar figure or percentage of benefits payable to the Alternate Payee as of a date that is no earlier than \_\_\_\_\_.)

\_\_\_\_\_. The Plan's current recordkeeper can determine the account value and calculate any earnings and/or losses from \_\_\_\_\_ through the date assets are transferred or distributed to the Alternate Payee. Keep in mind that if you must adjust the valuation date forward and a percentage is awarded to the Alternate Payee in this section, you should consider whether to adjust the Alternate Payee's awarded percentage to account for any additional contributions (and any gains/losses accruing thereon) made by or for the Participant to the account after the originally intended valuation date.)

Such Total Account Balance shall be determined after the account is reduced by the outstanding balance of the Participant's account reduction loan(s), if any, as of the valuation date specified above, such that the Account Balance shall not include the outstanding balance of any account reduction loan(s) as of the valuation date. The obligation to repay any Participant Plan loan(s) from and after the date of this Order remains solely with the Participant. Such Total Vested Account Balance shall include all amounts maintained under all of the various accounts and/or sub-accounts established on behalf of the Participant, including rollover and transfer contributions.

The Alternate Payee's portion of the benefits described above shall be allocated on a pro rata basis first from all of the core accounts and/or core investment options maintained under the Plan on behalf of the Participant other than life insurance or Self-Directed Brokerage ("SDB"), if any. The Plan shall redeem amounts from a life insurance contract, if any, issued for the Participant under the Plan only to the extent necessary to obtain the amount that this order awards to the Alternate Payee. If there are any SDB investments, and if the balance in the core investments is insufficient to satisfy the judgment, Participant must initiate a transfer of the amount needed to satisfy the judgment from the SDB into the core investments. If participant fails to initiate such a transfer, or if the transfer is insufficient to satisfy the judgment, one hundred percent (100%) of the SDB Money Market Fund will be transferred to the core investments. If the balance is still insufficient to satisfy the judgment, the entire SDB account may be liquidated and transferred to the core investments.

Unless the Alternate Payee elects an immediate lump sum distribution by the Plan at the time this Order is submitted to, and approved by, the Plan, such benefits shall also be segregated and separately maintained in a nonforfeitable Account(s) established on behalf of the Alternate Payee. This Account(s) will initially be established proportionately in the same core investment options as the Participant account. Alternate Payee may make subsequent investment selections as and when permitted under the terms of the Plan. Alternate Payee's account shall experience gains and or losses according to the investment experience of the investment options in which Alternate Payee's share is invested.

9. **Commencement Date and Form of Payment to Alternate Payee:** If the Alternate Payee so elects on an appropriate form, the benefits shall be paid to the Alternate Payee as soon as administratively feasible following the date this Order is approved as a QDRO by the Plan. Benefits will be payable to the Alternate Payee in any form or permissible option otherwise available to participants under the terms of the Plan, except a joint and survivor annuity. The Alternate Payee will be responsible for paying any applicable withdrawal charges imposed under any investment account(s) with respect to his or her share under the plan.
10. **Alternate Payee's Rights and Privileges:** On and after the date that this Order is deemed to be a QDRO, but before the Alternate Payee receives a total distribution under the Plan, the Alternate Payee shall be entitled to all of the rights and election privileges that are afforded to Plan beneficiaries, including, but not limited to, the rules regarding the right to designate a beneficiary for death benefit purposes and the right to direct Plan investments, only to the extent permitted under the provisions of the Plan.

11. **Death of Alternate Payee:** In the event of the Alternate Payee's death prior to receiving the full amount of benefits assigned under this Order and under the benefit option chosen by the Alternate Payee, such Alternate Payee's beneficiary(ies), as designated on the appropriate form provided to the Plan or, in the absence of a beneficiary designation, the remainder of any unpaid benefits under the terms of this Order shall be paid in accordance with the terms of the Plan.
12. **Death of Participant:** Should the Participant predecease the Alternate Payee, such Participant's death shall in no way affect the Alternate Payee's right to the portion of the benefits as stipulated herein.
13. **Savings Clause:** This Order is not intended, and shall not be construed in such a manner as to require the Plan:
  - a. to provide any type or form of benefits or any option not otherwise provided under the Plan;
  - b. to provide increased benefits to the Alternate Payee;
  - c. to pay any benefits to the Alternate Payee which are required to be paid to another alternate payee under another order previously determined to be a QDRO; or
  - d. to make any payment or take any action which is inconsistent with any federal or state law, rule, regulation or applicable judicial decision.
14. **Certification of Necessary Information:** All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan of such information as the Plan may reasonably require from such parties.
15. **Continued Qualified Status of Order:** It is the intention of the parties that this QDRO continue to qualify as a QDRO, as it may be amended from time to time.
16. **Tax Treatment of Distributions Made Under This Order:** For purposes Sections 402(a)(1) and 72 of the Code, or any successor Code section, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of this Order, and as such, will be required to pay the appropriate federal income taxes on such distribution.
17. **Parties Responsibilities in Event of Error:** In the event that the Plan inadvertently pays the Participant any benefits that are assigned to the Alternate Payee pursuant to the terms of this Order, the Participant shall immediately reimburse the Alternate Payee to the extent that the Participant has received such benefit payments by paying such amounts directly to the Alternate Payee within ten (10) days of receipt.

In the event that the Plan inadvertently pays the Alternate Payee any benefits that are to remain the sole property of the Participant pursuant to the terms of this Order, if the Participant has experienced a distributable event under the terms of the Plan, the Alternate Payee shall immediately reimburse the Participant to the extent that the Alternate Payee has received such benefit payments by paying such amounts directly to the Participant within ten (10) days of receipt. If the Participant has not experienced a distributable event under the terms of the Plan, the Alternate Payee shall immediately return such overpayment to the Plan within ten (10) days of receipt.



18. **Effect of Plan Termination:** In the event of a Plan termination, the Alternate Payee shall be entitled to receive his or her portion of the Participant's benefits as stipulated herein in accordance with the Plan's termination provisions for participants and beneficiaries.
19. **Continued Jurisdiction:** The Court retains jurisdiction over this matter to amend this Order to establish or maintain its status as a qualified domestic relations order, as amended and the original intent of the parties as stipulated herein. The Court shall also retain jurisdiction to enter such further orders as are necessary to enforce the assignment of benefits to the Alternate Payee as set forth herein.
20. **Fee:** A processing fee of \$250.00 shall be charged one-half (\$125.00) against the Alternate Payee's share/account and one-half (\$125.00) against the Participant's remaining account. In the event that the Alternate Payee is awarded 100% of the Participant's account balance as of the date this Order is processed pursuant to this Order, the entire processing fee shall be charged to the Alternate Payee's account/share. If there are not sufficient funds in either party's account to pay that party's respective share of the fee, the difference shall be charged to the other party.

BY THE COURT:

.....  
JUDGE

.....  
Petitioner

.....  
Respondent

**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY  
RECORDKEEPING SERVICES AGREEMENT ADDENDUM FOR  
EMPOWER PARTICIPANT EXPERIENCE**

---

This Addendum to the Recordkeeping Service Agreement (“Agreement”) entered into between Great-West and Employer describes certain Plan and investment education and communications materials and services, including education and planning tools through the internet and electronic delivery of plan materials. This Addendum amends or modifies anything in the Agreement to the contrary.

1. Great-West will provide Participants, with certain exceptions, access to retirement income projections through the Empower website. The Empower website will provide Participants with a tool to estimate monthly retirement income and goals based on a number of factors including the Participant’s Plan assets, Plan contribution rates, and compensation data.

Great-West will provide Participants, with certain exceptions, access to Great-West’s Health Cost Estimator on the Empower website. The Health Cost Estimator will provide Participants with estimated monthly health care expenses based on retirement age and certain personal health condition information provided to Great-West by Participants. All health care costs and projections will be provided by an unrelated third party vendor. Employer agrees that the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) does not apply to any personal health condition information provided to Great-West by Participants. Employer also acknowledges that such health condition information is owned by the Participant and not by Employer, and that Great-West will not disclose to Employer any health condition information provided to Great-West by Participants without the Participant’s consent. Great-West agrees that, except as provided in the preceding sentence, it will otherwise treat such health condition information as Nonpublic Personal Information (“NPI”) to be held in confidence under the terms of the Agreement. Employer further agrees not to use any information it obtains through the Health Cost Estimator other than for Plan purposes.

Employer represents that all of the enrollment, education, investment and planning information, materials, and tools provided by Great-West under this Addendum are appropriate for use by the Plan, and agrees that all are intended to be investment education as described in ERISA Regulation 2509.96-1 and are not investment, tax or health care advice. Employer further acknowledges that the retirement income projections and the Health Cost Estimator are subject, without limitation, to the risks and limits disclosed on the Participant website, and should not be relied on as the primary basis for medical, insurance, investment, financial, retirement or tax planning decisions.

2. Great-West will deliver plan documents and notices to participants in an electronic manner to the extent applicable as follows:
  - a. Quarterly statements will be posted to the participant website after quarter end. Participants will receive an annual notice advising them of the availability of the quarterly statement on the participant website and the right to receive a paper copy of the statement.
  - b. Plan notices to be delivered by Great-West will be delivered via email to the participant’s email address as provided to Great-West by the Employer or, if the participant has affirmatively elected on the participant website, to the email address provided by the participant or, if neither, via regular mail.

By providing Great-West with a participant’s email address, the Employer confirms that the participant has the effective ability to access notices delivered to such email address at work.

Participants may elect on the participant website or by contacting the Client Service Center to receive quarterly statements and plan notices via regular mail at any time.

3. Empower has partnered with an outside service provider to offer Participants the opportunity to enroll in the Empower Savings and Bill Manager, a cash-flow management solution, as part of Empower’s participant experience. The Empower Saving and Bill Manager allows employees and

Participants to link any bills they want to have paid through the service, create a savings account for emergency savings or other short term savings goals, and automate a debt pay-down strategy. The remainder of any allocated amounts will stay in the user's pre-existing linked bank account. Users have full access to the funds in the savings accounts established within the service, and the user may withdraw or move those funds at any time.

Empower Retirement has integrated the service provider's offering into the Participant web experience through a dedicated link and single sign-on capabilities. Empower will share information with the service provider as necessary to streamline the user experience and to communicate with employees and Participants about the potential benefits of the service

The cost for employees and Participants that enroll in the service is \$6 per month

By signing the Agreements/Signature Adoption Page, Employer agrees to all of the above provisions.

**EMPOWER RETIREMENT, LLC  
RECORDKEEPING SERVICES AGREEMENT ADDENDUM FOR  
ELECTRONIC DELIVERY**

---

This Addendum to the Recordkeeping Service Agreement (“Agreement”) entered into between Empower Retirement, LLC and Employer amends the Electronic Delivery section of the Agreement and modifies anything in the Agreement to the contrary effective on or about January 26, 2022.

**Electronic Delivery.** Empower will deliver plan-related documents to Participants under the Agreement in an electronic manner as described below.

Plan notices to be delivered by Empower will be delivered via an email notice of the availability of the plan-related document on the Participant website sent to an email address provided to Empower by the Participant or by the Plan Sponsor. If Empower is not provided with an email address, notices will be delivered to the Participant via regular mail.

Empower will send an initial notification of default electronic delivery via regular mail to each Participant at least 10 days prior to delivering any plan-related documents via email. The initial notice of default electronic delivery will include the participant’s email address that will be used to deliver notices of the availability of plan-related documents, a statement of the Participant’s right to request and obtain a paper version of the documents and a statement of the option to opt out of electronic delivery and receive only paper versions of the documents.

If an email notice of availability of a plan-related document is returned undeliverable, Empower will send the notice to another email on file for the Participant. If no other email is on file for the Participant or such other email is also returned undeliverable, plan related documents will be delivered via regular mail to the Participant until such time as Empower is provided another email address for the Participant.

Participants may request to receive one paper copy of a plan-related document for no cost. In addition, Participants may opt out of electronic delivery and request that their plan-related documents be delivered via regular mail at any time.

By signing the Agreements/Signature Adoption Page, Employer agrees to all of the above provisions.



City of Allegan  
231 Trowbridge Street  
Allegan, MI 49010

## MEMORANDUM

TO: Allegan City Council  
FROM: Michaela Kleehammer, City Clerk  
REVIEWED BY: Joel Dye, City Manager  
DATE: August 28, 2023

SUBJECT: Cancellation of City Council Meetings Monday, September 11, 2023

### Action Requested:

It is requested that the City Council approve the cancellation of the City Council Study Session and Regular Session meetings on Monday, September 11, 2023, to participate in the Allegan County Fair Activities/Parade.

### Background:

The Allegan County Fair will take place from September 8<sup>th</sup> through September 16<sup>th</sup>, 2023. The City Council has in years past participated in the annual Allegan County Fair Parade. To participate in the activities, the Council will need to cancel the Study Session and Regular Session meeting of Monday, September 11, 2023.

### Attachment(s):

None





City of Allegan  
City Manager's Office  
269.673.5511  
231 Trowbridge Street  
Allegan, MI 49010

## MEMORANDUM

TO: Allegan City Council  
FROM: Michaela Kleehammer, City Clerk  
REVIEWED BY: Joel Dye, City Manager  
DATE: August 28, 2023

SUBJECT: Accept the for your information proposed changes to Chapters 1-5, 7-8, 10-12, 14, 15, 18, and 21 of the City of Allegan Code of Ordinances.

### Action Requested:

It is requested that the City Council accept for your information proposed changes to Chapters 1-5, 7-8, 10-12, 14, 15, 18, and 21 of the City of Allegan Code of Ordinances.

### Background:

At 5:30 PM on Wednesday September 6, 2023, the City Council will be holding a special meeting with city staff and city attorney Nick Curcio to review several proposed changes to our code of ordinances.

In Spring 2022, three members of the City Council began to meet with city staff to review all chapters of the Allegan Code of Ordinances. As chapters were reviewed, staff forwarded the chapters to the city's attorney Nick Curcio for his review. In January 2023, city staff began meeting with Nick Curcio biweekly to discuss changes proposed by the subcommittee of City Council and prepare the chapters to be presented to the entire City Council for review. At this time, chapters 1-5, 7-8, 10-12, 14, 15, 18, and 21 have been fully reviewed by the city attorney and staff and are ready for Council review and discussion.

Each chapter will fall into one of three categories: changes proposed, completely rewritten, need to be repealed, or require no changes. The chapters with proposed changes will have a summary of the proposed changes, a redlined version showing the proposed changes to the text, if needed, and a clean version that implements the proposed changes. Chapters that require a complete rewrite and chapters that need to be repealed will only have a summary of the changes and a clean version. Rewritten chapters and chapters that need to be repealed will not have a redlined version of the text since no sections of the current chapter were kept. Chapters 1-5, 7-8, 10-12, 14, 15, 18, and 21 are categorized as follows:

### Proposed Changes

- Chapter 1 – General Provisions
- Chapter 2 – Administration
- Chapter 3 – Advertising
- Chapter 5 – Amusements and Entertainments
- Chapter 7 – Buildings and Building Regulations
- Chapter 8 – Cemeteries
- Chapter 18 – Parks and Recreation



City of Allegan  
City Manager's Office  
269.673.5511  
231 Trowbridge Street  
Allegan, MI 49010

**Completely Rewritten**

- Chapter 4 – Alcoholic Liquor
- Chapter 12 – Garbage and Refuse
- Chapter 15 – Noise

**Need to be Repealed**

- Chapter 7.5 – Cable Television
- Chapter 10 – Elections
- Chapter 11 – Fire Prevention and Protection
- Chapter 14 – Mobile Homes and Trailers
- Chapter 21 – Police

Please note Chapter 6 – Animals has already been adopted with its proposed changes and there are no recommended changes to Chapter 9 – Community Development and Chapter 13 – Historic Preservation. Also, if a chapter is not listed above, we are still reviewing that chapter.

**Attachment(s):**

Chapter 1 Summary, Clean Ordinance, and Redlined Version  
Chapter 2 Summary, Clean Ordinance, and Redlined Version  
Chapter 3 Summary, Clean Ordinance, and Redlined Version  
Chapter 4 Summary and Clean Ordinance  
Chapter 5 Summary, Clean Ordinance, and Redlined Version  
Chapter 7 Summary, Clean Ordinance, and Redlined Version  
Chapter 7.5 Summary and Clean Ordinance  
Chapter 8 Summary and Clean Ordinance  
Chapter 10 Summary, Clean Ordinance, and Proposed Resolutions  
Chapter 11 Summary and Clean Ordinance  
Chapter 12 Summary and Clean Ordinance  
Chapter 14 Summary and Clean Ordinance  
Chapter 15 Summary and Clean Ordinance  
Chapter 18 Summary, Clean Ordinance, and Redlined Version  
Chapter 21 Clean Ordinance

The proposed amendments to Chapter 1 of the City Code would:

1. Replace references to the 1947 charter with references to the 1988 charter.
2. Reword definitions in a manner consistent with the way definitions are provided in state statutes.
3. Eliminate unnecessary or potentially problematic rules of construction from section 1-2, and repeal section 1-3 in its entirety for the same reason.
4. Clarify that editor's notes added by the codifying service (e.g., [municode.com](http://municode.com)) are not part of the adopted text, but that cross-references within the text may be part of the adopted text.
5. Substantially shorten the list of provisions "saved from repeal" by specifying that all uncodified ordinances remain in full force and effect when not inconsistent with the adopted code.
6. Remove outdated references to the preparation of a "supplement," which referred to a paper supplement to a printed copy of the code. The City now posts its ordinances online rather than publishing an official printed code book.
7. Provides new language that designates most offenses municipal civil infractions, unless the code specifically designates them as criminal misdemeanors. This is consistent with modern trends in local government across the country.

**CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CHAPTER 1 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES, TO UPDATE THE GENERAL PROVISIONS OF THE  
CODE AND TO PROVIDE PENALTIES FOR VIOLATIONS**

The City of Allegan ordains:

Section 1. Amendment. Chapter 1 of the City of Allegan, Code of Ordinances, entitled “General Provisions,” is hereby amended to read in its entirety as follows:

**Chapter 1 – General Provisions**

**Sec. 1-1. Code designated and cited.**

This codification of ordinances shall be known and cited as the “Code of Ordinances, City of Allegan, Michigan.”

**Sec. 1-2. Definitions and rules of construction.**

In the construction of this Code and of all ordinances of the city, the following definitions and rules of construction shall be observed, unless they are inconsistent with the intent of the council or the context clearly requires otherwise:

- (a) *Charter* means the Charter of the City of Allegan, Michigan, adopted November 8, 1988, and shall include any amendment to such Charter.
- (b) *City* means the City of Allegan, Michigan.
- (c) *Code* means the Code of Ordinances, City of Allegan, Michigan, as designated in section 1-1, and as hereinafter modified by amendment, revision and by the adoption of new chapters, articles, divisions or sections.
- (d) *Council* means the council of the City of Allegan.
- (e) *County* means the County of Allegan in the State of Michigan.
- (f) *Gender*. Words denoting the masculine gender shall be deemed to include the feminine and neuter genders.
- (g) *Joint authority*. All words purporting to give joint authority to three (3) or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons unless it is otherwise expressly declared in the ordinance granting the authority.
- (h) *MCL, MSA*. The abbreviations “MCL” and “MSA” refer to the Michigan Compiled Laws and Michigan Statutes Annotated respectively, as amended.
- (i) *Month* means a calendar month.
- (j) *Number*. Words in the singular shall include the plural, and words in the plural shall include the singular.
- (k) *Officer, employee, department, board, commission or other agency*. Whenever any officer, employee, department, board, commission, or other agency is referred to by title only, such

reference shall be construed as if followed by the words "of the City of Allegan, Michigan." Whenever, by the provisions of this Code, any officer, employee, department, board, commission or other city agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, employee, department, board, commission or agency shall mean and include such officer, employee, department, board, commission or agency, or any deputy or authorized subordinate.

- (l) *Person*. The word "person" and its derivatives and the word "whoever" shall include a natural person, partnership, association, legal entity or a corporate body or any body of persons corporate or incorporate. Whenever used in any clause prescribing and imposing a penalty, the term "person" or "whoever" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

- (m) *State* means the State of Michigan.

- (n) *Tense*. Words used in the present or past tense include the future as well as the present and past.

### **Sec. 1-3. Application to territorial boundaries only.**

All provisions of this Code are limited in application to the territorial boundaries of the municipal corporation unless expressly indicated otherwise.

### **Sec. 1-4. Editor's notes.**

Editor's notes are by way of explanation only and should not be deemed a part of the text of any section.

### **Sec. 1-5. Application to future legislation.**

All of the provisions of this chapter, not incompatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this Code unless otherwise specifically provided.

### **Sec. 1-6. Rules of separability.**

Each chapter, article, division or section or, whenever divisible, subsection of this Code is hereby declared to be separable, and the invalidity of any chapter, article, division, section or divisible subsection, shall not be construed to affect the validity of any other chapter, article, division, section or subsection of this Code.

### **Sec. 1-7. Reference to other sections.**

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter be changed or materially altered by the amendment or revision.

### **Sec. 1-8. Reference to offices.**

Reference to a public officer shall be deemed to apply to any office, officer, or employee of the City of Allegan, exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

### **Sec. 1-9. Certain provisions saved from repeal.**

Nothing in this Code or the ordinance adopting this Code shall affect the following when not inconsistent with this Code:

- (a) Any offense committed or penalty incurred or any right established prior to the effective date of the Code;
- (b) Any uncodified ordinance adopted prior to the effective date of this Code. Such ordinances are on file in the city clerk's office.

### **Sec. 1-10. - Codification of Ordinances.**

- (a) The city clerk shall be responsible for codifying this Code and making it available for inspection by the general public. Ordinances which are of a general and permanent nature shall be included within such codification.
- (b) In preparing a codification of this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof.
- (c) When preparing a codification to this Code, the Clerk may make formal, nonsubstantive changes in ordinances and parts of ordinances included insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:
  - (1) Organize the ordinance material into appropriate subdivisions;
  - (2) Provide appropriate captions, headings and titles, for sections and other subdivisions of the Code printed in the supplement, and make changes in such captions, headings, and titles;
  - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
  - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
  - (5) Make other nonsubstantive changes or correct typographical errors as necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier otherwise make any change in the meaning or effect of ordinance material.

**Sec. 1-11. General penalties and fines.**

- (a) Unless a violation of this Code or any ordinance of the city is specifically designated in the Code or ordinance as a misdemeanor, the violation shall be deemed to be a municipal civil infraction.
- (b) The penalty of a misdemeanor violation shall be a fine not exceeding \$500.00 (plus costs of prosecution), or imprisonment not exceeding 90 days, or both, unless a specific penalty is otherwise provided for the violation by this Code or any ordinance.
- (c) The civil fines for a violation which is a municipal civil infraction shall be as set forth in the provisions of this Code or of any ordinance adopted by the city, declaring a violation to be a municipal civil infraction and prescribing fines, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of Act No. 236 of the Public Acts of 1961, as amended, and other applicable laws. If no such fine is provided, the applicable fine shall be \$50 for a first violation, \$150 for a second violation, and \$300 for a third or subsequent violation. Such fines or any other applicable fines provided in this code shall be payable by persons served with municipal ordinance violations to the municipal ordinance violations bureau. Payment with the municipal ordinance violations bureau shall require an admission of responsibility.
- (d) A "violation" includes any act which is prohibited or made or declared to be unlawful or an offense by this Code or any ordinance and, any omission or failure to act where the act is required by this Code or any ordinance.
- (e) Each day on which any violation of this Code or any ordinance continues constitutes a separate offense/violation and shall be subject to penalties or sanctions as a separate offense.
- (f) In addition to any remedies available at law, the city may bring an action for an injunction or other process against a person, firm or corporation to restrain, prevent or abate any violation of this Code or any city ordinance.

(g) This section shall not apply to the failure of officers and employees of the city to perform municipal duties required by this Code or by any ordinance.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

### **CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

## **Sec. 1-1.– Code designated and cited.**

This codification of ordinances shall be known and cited as the “Code of Ordinances, City of Allegan, Michigan.”

## **Sec. 1-2.– Definitions and rules of construction.**

In the construction of this Code and of all ordinances of the city, the following definitions and rules of construction shall be observed, unless they are inconsistent with the intent of the council or the context clearly requires otherwise:

- (a) *Charter.* ~~The word “Charter” shall mean~~ means the Charter of the City of Allegan, Michigan, adopted ~~April 9, 1947~~ November 8, 1988, and shall include any amendment to such Charter.
- (b) *City.* ~~The word “city” shall denote~~ means the City of Allegan, Michigan.
- (c) *Code.* ~~The expressions “Code” or “this Code” shall mean~~ Code means the Code of Ordinances, City of Allegan, Michigan, as designated in section 1-1, and as hereinafter modified by amendment, revision and by the adoption of new chapters, articles, divisions or sections.

~~*Computation of time.* The time within which an act is to be done, as provided in this Code or in any order issued pursuant to this Code, when expressed in days, shall be computed by excluding the first day and including the last, except that if the last day be Sunday or a legal holiday it shall be excluded; and when the time is expressed in hours, the whole of Sunday or a legal holiday, from midnight to midnight, shall be excluded.~~

- (d) *Council.* ~~The word “council” shall mean~~ means the council of the City of Allegan.
- (e) *County.* ~~The term “the county” or “this county” shall mean~~ County means the County of Allegan in the State of Michigan.
- (f) *Gender.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders.

~~*General terms.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.~~

- (g) *Joint authority.* All words purporting to give joint authority to three (3) or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons unless it is otherwise expressly declared in the ordinance granting the authority.
- (h) *MCL, MSA.* The abbreviations “MCL” and “MSA” refer to the Michigan Compiled Laws and Michigan Statutes Annotated respectively, as amended.
- (i) *Month.* ~~The word “month” shall mean~~ means a calendar month.
- (j) *Number.* Words in the singular shall include the plural, and words in the plural shall include the singular.
- (k) *Officer, employee, department, board, commission or other agency.* Whenever any officer, employee, department, board, commission, or other agency is referred to by title only, such reference shall be construed as if followed by the words “of the City of Allegan, Michigan.” Whenever, by the provisions of this Code, any officer, employee, department, board, commission or other city agency of the city is assigned any duty or empowered to perform any act or duty, reference to such officer, employee, department, board, commission or agency shall mean and include such officer, employee, department, board, commission or agency, or any deputy or authorized subordinate.



- (l) *Person*. The word "person" and its derivatives and the word "whoever" shall include a natural person, partnership, association, legal entity or a corporate body or any body of persons corporate or incorporate. Whenever used in any clause prescribing and imposing a penalty, the term "person" or "whoever" as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers thereof.

~~Shall/may. Whenever the word "shall" appears in this Code it shall be considered mandatory and not directory, except as otherwise provided. "May" is permissive.~~

- (m) ~~State. The term "the state" or "this state" shall be construed to mean~~State means the State of Michigan.

- (n) *Tense*. Words used in the present or past tense include the future as well as the present and past.

**Sec. 1-3.**~~— Interpretation per state acts.~~

~~Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this Code as those governing the interpretation of the Public Acts of Michigan.~~

**Sec. 1-4.**~~— Application to territorial boundaries only.~~

All provisions of this Code are limited in application to the territorial boundaries of the municipal corporation ~~although the same may not be so limited specifically.~~

unless expressly indicated otherwise.

**Sec. 1-5.**~~— Captions.~~

~~Headings and captions used in this Code such as the chapter, article, division and section numbers, are employed for reference purposes only and shall not be deemed a part of the text of any section.~~

**Sec. 1-6.**~~— References and~~4. Editor's notes.

~~Charter references, cross references, state law references and editor's~~Editor's notes are by way of explanation only and should not be deemed a part of the text of any section.

**Sec. 1-7.**~~— 5.~~ **Application to future legislation.**

All of the provisions of this chapter, not incompatible with future legislation, shall apply to ordinances hereafter adopted amending or supplementing this Code unless otherwise specifically provided.

**Sec. 1-8.**~~— 6.~~ **Rules of separability.**

Each chapter, article, division or section or, whenever divisible, subsection of this Code is hereby declared to be separable, and the invalidity of any chapter, article, division, section or divisible subsection, shall not be construed to affect the validity of any other chapter, article, division, section or subsection of this Code.

**Sec. 1-9.**~~— 7.~~ **Reference to other sections.**

Whenever in one section reference is made to another section hereof, such reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter be changed or materially altered by the amendment or revision.

**Sec. 1-~~10~~-8. Reference to offices.**

Reference to a public officer shall be deemed to apply to any office, officer, or employee of the City of Allegan, exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

**Sec. 1-~~11~~-9. Certain provisions saved from repeal.**

Nothing in this Code or the ordinance adopting this Code shall affect the following when not inconsistent with this Code:

- (a) ~~(1) — Any offense committed or penalty incurred or any right established prior to the effective date of the Code;~~
- ~~(2) — Any uncodified ordinance levying annual taxes;~~
- ~~(3) — Any ordinance appropriating money;~~
- ~~(4) — Any ordinance authorizing adopted prior to the issuance effective date of bonds or borrowing of money;~~
- ~~(5) — Any ordinance establishing utility rates;~~
- ~~(6) — Any ordinance establishing franchises or granting special rights to certain persons;~~
- ~~(7) — Any ordinance authorizing public improvements;~~
- ~~(8) — Any ordinance authorizing the purchase or sale of real or personal property;~~
- ~~(9) — Any ordinance annexing or detaching territory;~~
- ~~(10) — Any ordinance granting or accepting easements, plats or dedication of land to public use;~~
- ~~(11) — Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city;~~
- ~~(12) — Any ordinance establishing or prescribing grades in the city;~~
- ~~(13) — Any ordinance prescribing the number, classification or compensation of any city officers or employees;~~
- ~~(14) — Any ordinance prescribing traffic and parking restrictions pertaining to specific streets;~~
- ~~(15) — Any ordinance pertaining to zoning;~~
- ~~(16) — Any other ordinance, or part thereof, which is not of a general and permanent nature; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. Such ordinances are on file in the city ~~clerk's~~clerk's office.~~
- (b)

**Sec. 1-~~12~~-Supplementation10. - Codification of Code Ordinances.**

- ~~(a) — By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the council. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.~~

~~(a)~~ ~~(b)~~ — The city clerk shall be responsible for codifying this Code and making it available for inspection by the general public. Ordinances which are of a general and permanent nature shall be included within such codification.

~~(a)~~ ~~(b)~~ — In preparing a supplement to codification of this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof ~~from reprinted pages~~.

~~(b)~~ ~~(c)~~ ~~(e)~~ — When preparing a supplement to codification to this Code, the ~~codifier (meaning the person, agency or organization authorized to prepare the supplement)~~ Clerk may make formal, nonsubstantive changes in ordinances and parts of ordinances included ~~in the supplement~~, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) ~~(1)~~ — Organize the ordinance material into ~~appropriation~~ appropriate subdivisions;

(2) ~~(2)~~ — Provide appropriate ~~catchlines~~ captions, headings and ~~titles~~ titles, for sections and other subdivisions of the Code printed in the supplement, and make changes in such ~~catchlines~~ captions, headings, and titles;

(3) ~~(3)~~ — Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) ~~(4)~~ — Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections \_\_\_\_\_ to \_\_\_\_\_" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

~~(5)~~ — Make other nonsubstantive changes or correct typographical errors as necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier otherwise make any change in the meaning or effect of ordinance material ~~included in the supplement or already embodied in the Code~~.

(5) .

**Sec. 1-13. 11. General penalty penalties and fines.**

- ~~(a) Unless another penalty is expressly provided by this Code for any particular provision or section, every person convicted of a violation of any provision of this Code, or any rule, regulation or order adopted or issued in pursuance thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) and costs of prosecution or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment in the discretion of the court. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.~~
- ~~(b) The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section of this Code whether or not such penalty is reenacted in the amendatory ordinance.~~
- ~~(c) The penalty shall be in addition to the abatement of the violating condition, any injunctive relief, or revocation of any permit or license.~~

**Sec. 1-14. ~~General penalty for municipal civil infractions.~~**

- ~~(a) (a) — Unless another penalty is expressly provided, any person determined responsible for a violation of this Code which has been designated as a municipal civil infraction shall be punishable by a fine of not less than fifty dollars (\$50.00) but not to exceed two thousand five hundred dollars (\$2,500.00) and the cost of prosecution of not less than nine dollars (\$9.00) but not to exceed five hundred dollars (\$500.00). Each act of Unless a violation of this Code or any ordinance of the city is specifically designated in the Code or ordinance as a misdemeanor, the violation shall be deemed to be a municipal civil infraction.~~
- ~~(b) The penalty of a misdemeanor violation shall be a fine not exceeding \$500.00 (plus costs of prosecution), or imprisonment not exceeding 90 days, or both, unless a specific penalty is otherwise provided for the violation by this Code or any ordinance.~~

~~The civil fines for a violation and every day upon which any such violation shall occur or continue shall constitute a separate offense.~~

- ~~(b) In addition to the penalties provided by this section, the district court shall have equitable jurisdiction to enforce any judgment, writ, or order necessary to enforce any provision, the violation of which is a municipal civil infraction, including, but not limited to, abatement of the violating condition or the granting of any injunctive relief.~~
- ~~(c) The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any section, article or shall be as set forth in chapter of this Code, the provisions of this Code or of any ordinance adopted by the city, declaring a violation of which is designated as to be a municipal civil infraction.~~
- ~~(c) (Ord. and prescribing fines, plus any costs, damages, expenses and other sanctions, as authorized under Chapter 87 of Act No. 319, § 2, 8-12-96)236 of the Public Acts of 1961, as amended, and other applicable laws. If no such fine is provided, the applicable fine shall be \$50 for a first violation, \$150 for a second violation, and \$300 for a third or subsequent violation. Such fines or any other applicable fines provided in this code shall be payable by persons served with municipal ordinance violations to the municipal ordinance violations bureau. Payment with the municipal ordinance violations bureau shall require an admission of responsibility.~~
- ~~(d) A “violation” includes any act which is prohibited or made or declared to be unlawful or an offense by this Code or any ordinance and, any omission or failure to act where the act is required by this Code or any ordinance.~~
- ~~(e) Each day on which any violation of this Code or any ordinance continues constitutes a separate~~

offense/violation and shall be subject to penalties or sanctions as a separate offense.

(f) In addition to any remedies available at law, the city may bring an action for an injunction or other process against a person, firm or corporation to restrain, prevent or abate any violation of this Code or any city ordinance.

(g) This section shall not apply to the failure of officers and employees of the city to perform municipal duties required by this Code or by any ordinance.

The proposed amendments to Chapter 2 of the City Code would:

1. Correct apparent typos in the list of “level 1 violations” of the ethics ordinance.
2. Provide more flexibility in the timing of Council member training following election or appointment.
3. Raise city staff’s purchasing authority from a maximum of \$5,000 to \$10,000 per item or service, and require that all purchases under \$10,000 be using the procedures currently provided in section 2-322 of the City Code (*i.e.*, purchases can be made without obtaining competitive prices, so long as the employee endeavors to make purchases at prices reflecting good value).
4. Remove confusing language making it a criminal misdemeanor for an employee to use “the purchase procedure set forth [in the ordinance] where it is not in fact necessary.”
5. Provide more flexibility in the posting of requests for sealed bids for city contracts. The new language would no longer require publication in a local newspaper, but would instead allow requests to be posted on the city’s website and in other appropriate places, such as trade publications pertinent to the particular service being requested.
6. Provide more flexibility as to when a contract bond is required.
7. Allow purchases from Council-approved vendors even when the item being purchased is not a “routine” item or service.
8. Repeal outdated language regarding the disposition of unclaimed property and replace with a reference to the Uniform Unclaimed Property Act of 1995.
9. Make minor modifications to provisions relating the City’s municipal civil infraction bureau in order to reflect current practices (*i.e.*, the bureau is located in City Hall and overseen by the City Manager).
10. Remove the “schedule of fines” table, which is duplicative of the textual description of the standard fine amounts in chapter 1 of the code.

**CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CHAPTER 2 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES, TO UPDATE THE PROVISIONS OF THE CODE  
RELATING TO ADMINISTRATION AND TO PROVIDE PENALTIES FOR  
VIOLATIONS**

The City of Allegan ordains:

Section 1. Amendment. Chapter 2 of the City of Allegan, Code of Ordinances is hereby amended to read in its entirety as follows:

**Chapter 2 – Administration**

**Article I – City Council**

**Sec. 2-1. Purpose and Intent.**

- (a) City residents and property owners are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity.
- (b) The effective functioning of democratic government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; public officials be independent, impartial and fair in their judgment and actions; public office be used for the public good, not for personal gain; and public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.
- (c) This article is intended to assure public confidence in the integrity of local government and its effective and fair operation.

**Sec. 2-2. Meetings.**

- (a) The council shall hold its regular meetings on the second and fourth Mondays of each month.
- (b) All regular council meetings shall be held in the Allegan City Hall in the city or at such other place at the council may from time-to-time designate by resolution.
- (c) Regular council meetings shall begin at 7:00 p.m., unless the council shall by resolution from time-to-time designate a different hour for the meeting.
- (d) Special meetings shall be noticed out and held as provided by the Michigan Open Meetings Act 1976 PA 267, MCL 15.261 *et seq.*

**Sec. 2-3. Council Code of Ethics.**

Members of the council shall:

- (a) *Act in the public interest.* Recognizing that stewardship of the public interest must be their primary concern, council members will work for the common good of the people of Allegan and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before the council. Council members shall also abide by the model of excellence provided for below in subsection (c).
- (b) *Comply with applicable law.* Council members shall comply with the laws of the nation, the state, and the city in the performance of their public duties. These laws include, but are not limited to: (i) the United

States and Michigan constitutions, (ii) federal and state statutes, rules and regulations, (iii) the Allegan City Charter, (iv) Allegan city ordinances, (v) Allegan city policies, (vi) council resolutions, (vii) city contractual obligations, (viii) requirements of any permits or other approvals issued to the city by federal or state agencies, and (ix) orders of any courts or administrative agencies of competent jurisdiction. This includes, without limitation, those pertaining to conflicts of interest, contracts with public entities, election campaigns, financial disclosures, employer responsibilities, and open processes of government.

(c) *Respect for process.* Council members shall perform their duties in accordance with the processes and rules of order established by the council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of council policy decisions by city staff.

(d) *Prepare for and conduct public meetings.* Council members shall prepare for public issues, listen courteously and attentively to all public discussions before the body, and focus on the business at hand. They shall refrain from interrupting other speakers, making comments not germane to the business of the body, or otherwise interfering with the orderly conduct of meetings.

(e) *Communicate pertinent information.* Council members shall publicly share substantive information that is relevant to a matter under consideration by the City Council which they may have received from sources outside of the public decision-making process.

(f) *Provide full disclosure.*

(1) Council members in the performance of their public duties shall not act upon any matter in which they have a material financial interest, or where they have a legal or fiduciary duty to another organization or entity or personal relationship that may give the appearance of a conflict of interest, without disclosing the full nature and extent of the interest to the other members of the council on the official record. Such disclosure must be made before the time to perform their duty or concurrently with the performance of the duty.

(2) The disclosure required by this subsection shall not supplant, but instead shall supplement, any disclosure of a personal, contractual, financial, business, employment or pecuniary interest required by law.

(g) *Avoid inappropriate gifts, favors, and loans.*

(1) A council member shall refrain from financial and business dealings that would tend to reflect adversely on the council member impartiality, interfere with the performance of their public duties or exploit their official position. A council member should not take any special advantage of services, goods or opportunity for personal gain that is not available to the public in general.

(2) A council member and any family member claimed as a dependent of the council member shall refrain from soliciting or accepting any gifts, loans or favors except that a council member and a family member claimed as a dependent of the council member may:

(i) Accept a gift or honorarium, not exceeding a value of \$100.00, for services rendered in the performance of their public duties or other activity devoted to the improvement of cities, communities and the lives of citizens.

(ii) Accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan in the regular course of business from a lending institution on the same terms as generally available to the public; and a scholarship, grant or fellowship awarded on the same terms as applied to other applicants.

(iii) Accept any other gift, favor or loan only if the donor is not a person or entity whose interests have come or are likely to come before the council.

(iv) Solicit and accept campaign contributions.



(h) *Properly treat confidential information.* Council members shall respect the confidentiality of information concerning the property, personnel or affairs of the city. They shall neither disclose nor divulge to an unauthorized person confidential information acquired in the course of their duties in advance of the time prescribed for its authorized release to the public without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

(i) *Use city resources only for city purposes.* Public resources, including city staff time, equipment, supplies, and facilities, not available to the public in general shall only be used for the benefit of the public and not for a council member's personal or private use.

(j) *Refrain from representing private interests.* In keeping with the role of council members as stewards of the public interest, a council member shall not appear on behalf of the private interests of third parties before the council or any board, committee, commissions, city staff or any proceeding of the City. For purposes of this section, the term "third parties" includes the council member's spouse and family members. Notwithstanding the forgoing, a council member may represent his or her own interests, including in matters involving property owned jointly with the council member's spouse or other persons. For example, a council member may appear before the City's historic district commission in a proceeding involving the council member's home.

(k) *Accurately represent city actions and policies.* Councilmembers shall represent the official policies or positions of the city and the council to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, council members shall neither state nor imply that they represent the opinions or positions of the council or the city.

(l) *Act only within their council role.*

(1) Council members shall respect and adhere to the council-manager structure of city government as provided the Allegan City Charter. In this structure, the council determines the policies of the city with the advice, information, and analysis provided by the public, subordinate boards, committees and commissions, and City staff.

(2) Council members therefore shall not seek to participate in or interfere with the administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement council decisions, actions or policies.

(m) *Maintain the independence of city boards and commissions.* Because of the value of the independent advice of subordinate boards, committees, commissions, and other bodies to the public decision-making process, a council members shall, except when the council member is a member of the public body, limit their participation in the proceedings of such subordinate public bodies to the communication of requested information and providing factual information relevant to the discussion at hand and shall not otherwise attempt to unduly influence the deliberations or outcomes of the proceedings.

(n) *Maintain and support a positive workplace environment.*

(1) Council members shall support the maintenance of a positive and constructive workplace environment for city employees and for citizens and businesses dealing with the city. Council members shall recognize their special role in dealings with city employees so as to in no way create the perception of inappropriate direction to staff nor, except for the purpose of inquiry, give specific orders to subordinates of the city manager or city attorney.

(2) Because council member actions and comments contribute to the environment in which all city employees must work, in order to create and promote a positive work environment under no circumstances shall a council member, either in public or private, intimidate, humiliate, or otherwise abuse a city employee.

#### **Sec. 2-4. Compliance and enforcement.**

(a) This article establishes minimum standards of ethical conduct for council members. Violations therefore constitute official misconduct and malfeasance in office.

(b) Council members each have the primary responsibility to assure that they understand and meet the standards in this article and that the public can continue to have full confidence in the integrity of government.

(c) Formal disciplinary procedures will be undertaken in serious situations or those potentially so. When it appears that such measures may become necessary, proper and tactful handling of the situation is of prime importance. Therefore, efforts will first be undertaken to attain satisfactory resolution of the matter quietly and informally.

(d) A council member shall intervene when the council member learns of actions of another council member that appear to violate this article. The exclusive procedure for intervention shall be as follows:

(1) Within 30 days of acquiring reasonable suspicion of a violation, the reporting council member shall notify the mayor and provide a detailed written account of the facts giving rise to reasonable suspicion. In cases where the mayor is suspected of a violation, notice shall be given to the mayor pro tem. The notification and written account shall be sent via email, using official City email accounts. Council members should be aware that all emails and other written communications transmitted during this process may be subject to disclosure under the Freedom of Information Act.

(2) Upon receiving notice of a suspected violation, the mayor (or, in the case of a suspected violation involving the mayor, the mayor pro tem) shall arrange a meeting with the suspected council member and the city attorney as soon as reasonably possible. The suspected council member has an obligation to participate in the meeting, and failure to do so shall be considered a violation of this ordinance.

(3) During the meeting, the mayor or mayor pro tem shall: (i) explain the nature and factual basis for the suspected violation; (ii) provide the suspected council member an opportunity to respond; and (iii) to the extent the circumstances allow, discuss possible ways to informally resolve the matter without further proceedings. For example, the suspected council member may offer to apologize, retract a previous statement, or take other corrective action. The mayor or mayor pro tem shall be responsible for leading the discussion. The role of the city attorney is to answer any procedural or legal questions that might arise during the discussion, and to assist the mayor or mayor pro tem in preparing a summary of the meeting for purposes of subsection (d)(4) below.

(4) Following the meeting, the mayor or mayor pro tem shall, with the help of the city attorney, prepare a written summary of the meeting. The summary shall be sent by email to the full City Council and the city manager.

(5) After reviewing the summary, any three council members may require that the full Council hold a public hearing to determine whether a violation of this article occurred and, if so, what sanctions shall be imposed for the violation. To request a public hearing, a council member shall send an email addressed only to the city manager, city clerk, and city attorney. Reasons for requesting a public hearing include: (i) the suspected councilmember refused to meet as required by subsection (d)(3), (ii) the meeting with the mayor or mayor pro tem and the suspected council member has occurred without a satisfactory outcome, (iii) there is reason to believe the suspected council member has repeatedly violated this article, or (iv) the violation is viewed to be especially serious.

(6) If the city manager receives requests for a public hearing from three or more Council members, the city manager shall schedule a public hearing for a regular or special meeting of the City Council.

(e) During the public hearing, the following process shall be followed to determine whether a violation has occurred and what sanctions, if any, shall be imposed:

(1) All council members, including the one accused of a violation, shall be provided a written summary of the facts giving rise to the charge(s) against the council member believed to have violated this article at least 10 days prior to the date of the public hearing;

(2) The mayor or, if the mayor is either the subject of the alleged violation or is unavailable, the mayor pro tem shall preside over the public hearing. If both the mayor and the mayor pro tem are subjects of the perceived violation, then the most tenured council member shall preside over the public hearing(s). If there is a question as to which council member is most tenured, then a majority vote of the remaining council members shall determine who between them shall preside.

(3) The presiding council member may determine whether the evidence presented against the council member, or in defense of the council member, is germane to the charge(s) against the council member and preclude its consideration if he or she determines it. The presiding council member may seek guidance from the city attorney regarding hearing procedural and evidentiary issues.

(4) The hearing shall be conducted informally.

(i) Without usurping the power granted to the council under City Charter section 5.19, the council is discouraged from issuing any subpoenas to compel witnesses to testify at a hearing under this article.

(ii) Witnesses shall be sworn by the city clerk or the clerk's designee if the designee is a notary public otherwise legally authorized to administer oaths.

(iii) The city attorney shall be present at the hearing and shall represent the council as a whole. The city attorney shall address procedural, evidentiary, or legal questions upon the request of the presiding council member, but shall not opine as to whether or not a violation of this ordinance has occurred.

(iv) Neither the federal nor state rules of evidence or civil procedure shall apply.

(v) Any council member(s) may ask questions of witnesses, except as otherwise provided in this subsection.

(vi) The accused council member may present witnesses in his or her defense after the presiding council member has presented all evidence supporting a violation. The accused council member may not cross-examine witnesses but shall be provided 10 minutes to present closing comments at the conclusion of evidence to respond to the evidence presented against him or her. The accused council member may request and be granted not more than one additional 10-minute period for closing comments (not to exceed 20 minutes total) if a motion is made, supported, and approved by majority vote of the remaining council members. The accused council member may, at his or her own expense, retain an attorney to perform or assist with the functions permitted in this subsection.

(vii) At the conclusion of the presentation of evidence or the closing comments of the accused council member, whichever is later, council members (except the accused council member) shall vote to determine whether or not a violation(s) of this article occurred by a simple majority vote of councilmembers present being required to make the determination.

(f) The council may impose sanctions on a council member violating this article. After a majority vote finding a violation of this article, a second majority vote shall determine what sanctions, if any, shall be imposed.

(1) Sanctions may include reprimand, formal censure, loss of committee assignment, restrictions on budget or travel, and a request to the governor for removal from office in the manner and for the causes provided by law.

(2) Sanctions shall be determined based upon the perceived severity level (1, 2, or 3) of the violation, with the following guidance:

(i) For a level 1 violation, penalty options shall include a verbal reprimand during a conversation with the mayor or mayor pro tem, or an additional and/or greater sanction as may be determined appropriate by the majority of the council voting. A violation of the following subsections of section 2-3 – (2)(c), (d), (e), (g)(1), (g)(2), (i), (j), (k), (l)(1), (l)(2), (m), or (n) shall minimally result in a level 1 sanction.

(ii) For a level 2 violation, the penalty options shall include censure, which shall be defined as a formal council resolution for specified conduct and/or a greater sanction as may be determined appropriate by the majority of the council voting. A second level 1 violation within 6 months of a prior violation found by the council, or a first violation following subsections of section 2-3 – (a), (f)(1), (g)(2), or (h) – shall minimally result in a level 2 sanction. Depending upon the severity of the violation, a first violation of subsection 2-3(g) may result in a level 2 sanction.

(iii) For a level 3 violation, the penalty options shall include censure and/or a request to the governor for removal. A third level 1 violation, or a second level 2 violation within 6 months of a prior violation found by the council, or a first violation of 2-3(b) may result in a level 3 sanction.

#### **Sec. 2-5. No Invalidation.**

A violation of this article shall not be a basis for invalidating a council decision or action.

#### **Sec. 2-6. Implementation.**

(a) Because council member compliance with this article is expected and all council members are expected to engage in its enforcement, council members must be thoroughly familiar with this article. To aid this familiarity, periodic workshops shall be held for training to be provided by Michigan Municipal League (MML), the city attorney, or others retained by the city regarding the role and duties of a council members and the requirements of this article. Unless excused by a majority vote of the remaining council members, all council members shall attend this workshop, or a make-up session as soon as can be practicably scheduled.

(b) Every year, at the meeting during which the council elects the mayor and mayor pro tem, all council members shall sign the following statement affirming that they have read and understand this article. The statement signed by each council member and retained by the city clerk.

As a member of the Allegan City Council, I agree to uphold the Code of Ethics in Chapter 2, article I of the Code of Ordinances, City of Allegan, Michigan. In addition, I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives, and contributions;
- Help create an atmosphere of respect and civility where individual members, City staff, and the public are free to express their ideas and work to their full potential;
- Respect the dignity and privacy of individuals and organizations;
- Respect and maintain the nature of confidential and privileged information and opinions acquired as a result of my position;
- Conduct my public affairs with honesty, integrity, fairness and respect for others;
- Avoid and discourage conduct that is divisive or harmful to the best interests of Allegan; and
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit.

I affirm that I have read and fully understand the Code of Ethics, Chapter 2, article I of the Code of Ordinances, City of Allegan, Michigan.

---

Signature/Date

## **Article II – Purchasing and Unclaimed Property**

### **Sec. 2-11. Purchasing agent, duties and application.**

- (a) *Purchasing agent.* The city manager shall be the purchasing agent of the city.
- (b) *Duties.* The purchasing agent shall have the following powers and duties:
  - (1) *Bulk purchases.* Exploit the possibilities of buying in bulk so as to take full advantage of discounts.
  - (2) *Encourage competition.* Endeavor to obtain as full and open competition as possible on all purchases and sales.
  - (3) *State and federal tax exemptions.* Act so as to procure for the city all state and federal tax exemptions to which it is entitled.
  - (4) *Forms.* Prescribe and maintain such forms as are reasonable and necessary for the operation of this article.
  - (5) *Minimize expenditure.* Act to procure for the city the highest quality in supplies and contractual services at the least expense to the city.
  - (6) *Purchasing analysis.* Keep informed of current developments in the field of purchasing, prices, market conditions and new products in the field of purchasing by other governmental jurisdictions, national technical societies, and trade associations having national recognition and private businesses and organizations.
  - (7) *Rules and regulations.* Establish and amend, when necessary, all rules and regulations authorized by this article and any others necessary to its operation.
  - (8) *Approved vendors list.* Prepare and maintain a vendor list as approved by Council.
  - (9) *Disqualification of bidders.* Have the authority to recommend Council to declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time.
  - (10) *Cooperation with the department supervisors and finance director.* Cooperate with the department supervisors and finance director so as to secure for the city the maximum efficiency in budgeting and accounting.
  - (11) *Other.* Perform other duties as may be designated or ordained by the city council.
- (c) *Application.* This article shall apply to all purchases and contracts for procurement of articles, commodities, supplies, materials, equipment, contractual services, and professional services entered into by the city, unless otherwise provided. It shall apply to every expenditure of public funds for public purchasing regardless of its source. No procurement shall prevent any public agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

### **Sec. 2-12. Purchase for items less than five thousand dollars (\$5,000.00).**

- (a) City department supervisors and other employees designated by the city manager, subject to budgetary appropriations, may make and approve purchases of articles, commodities, supplies, materials, equipment and contractual services where the estimated cost is less than five thousand dollars (\$5,000.00) in accordance with the purchasing procedures set forth in subsections (b), (c), and (d) below, without further approval of the city council. When acting under this section, the employee shall endeavor to purchase items at prices reflecting good value.

- (b) Competitive bidding shall not be required for purchases under this section. The employee shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.
- (c) The employee shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require a signature of the employee as well as the city manager's or department supervisor's signature and general ledger account code.
- (d) Any employee who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

**Sec. 2-13. Purchase for items less than ten thousand dollars (\$10,000.00).**

- (a) The city manager, subject to budgetary appropriations, may make and approve purchases of articles, commodities, supplies, materials, equipment and contractual services where the estimated cost is less than ten thousand dollars (\$10,000.00) in accordance with the purchasing procedures set forth in subsections (b), (c), and (d) below, without further approval of the city council. When acting under this section, the city manager shall endeavor to purchase items at prices reflecting good value.
- (b) Competitive bidding shall not be required for purchases under this section. The city manager shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.
- (c) The city manager shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require the city manager's signature and general ledger account code.
- (d) Any employee who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

**Sec. 2-14. Purchase for items or services between ten thousand dollars (\$10,000.00) and less than twenty thousand dollars (\$20,000.00).**

- (a) For all purchases, subject to budgetary appropriations, of articles, commodities, supplies, materials, equipment, contractual services, and other professional services where the estimated cost exceeds ten thousand dollars (\$10,000.00) but less than twenty thousand dollars (\$20,000.00), and in accordance with the purchasing procedures set forth in subsection (b), (c), and (d), the city manager shall obtain at least two (2) competitive quotations and shall submit quotes to city council with a recommendation for its approval. No purchase order shall be released or voucher drawn until the city council has approved the purchase.
- (b) All purchases should be made by soliciting competitive prices by obtaining at least two (2) written quotes to be submitted to the city manager for his authorization, unless such requirement is waived by the city council. Competitive bidding shall not be required for purchases under this section. The city manager shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.
- (c) The city manager shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require a signature of the purchaser as well as the city manager's signature and general ledger account code.

- (d) Any employee who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

**Sec. 2-15. Purchases for items or services more than twenty thousand dollars (\$20,000.00) and bid process.**

- (a) All contracts and purchases, where the estimated cost exceeds twenty thousand dollars (\$20,000.00), and in accordance with the purchasing procedures set forth in this section, must be approved by city council and shall be awarded on written contracts using the following procedure:
- (1) Notices inviting sealed competitive bids shall be published on the city's website and such other locations or publications as the city manager deems appropriate, which will reasonably notify any persons that might be interested in bidding on the contract. Notices may also be sent to those persons who would reasonably be expected to bid upon such purchases. Failure to notify all such persons shall in no way invalidate any contracts entered into hereunder.
  - (2) The notice inviting bids shall provide the following:
    - (A) Specifications of the articles or services to be purchased;
    - (B) The amount of surety to be submitted with the bid;
    - (C) The surety to be given with the contract;
    - (D) The time and place for opening bids;
    - (E) The conditions of the award of the contract, including any preference and the amount of such preference expressed as a percentage of the bid price which may be considered in determining the lowest and best bidder; and
    - (F) The city reserves the right to reject any or all bids and to award the contract in the city's best interest, and the city may select a bidder other than the lowest bidder in accordance with the terms stated in the notice.
  - (3) At least five (5) calendar days shall intervene between the date of last publication of said notices and the final date for submitting the bids.
  - (4) All bids shall be submitted sealed to the city clerk and shall be accompanied by surety in the form of a certified check in such amount as the city council shall prescribe in the public notice inviting bids. The bids shall be opened in public at the time and place stated in the newspaper notices.
  - (5) When all bids received are for the same total amount or unit price, and when the public interest will not permit the delay of re-advertising for bids, the city manager, at the direction of the city council, may purchase the commodity in the open market, provided the price paid in the open market shall not exceed any bid price submitted for the same commodity. Otherwise, the contract shall be awarded to the lowest and best bidder whose bid is most advantageous to the city. In determining which bidder is the most responsible bidder, the city manager and city council may consider the following:
    - (A) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
    - (B) Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
    - (C) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
    - (D) The quality of performance of previous contracts or services of the bidder;

- (E) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
  - (F) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
  - (G) The amount of which is expressed as a percentage of the bid price and stated in the notice inviting bids;
  - (H) The quality, availability and adaptability of the supplies or contractual services to the particular use required;
  - (I) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
  - (J) The number and scope of conditions attached to the bid;
  - (K) If the bidder is a local vendor who may be able to provide services more efficiently or provide local jobs.
- (6) The city manager shall submit the lowest and best bid to city council with a recommendation for its approval. No purchase order shall be released or voucher drawn until the city council has approved the bid.
- (b) Before any contract is executed, the successful bidder shall file with the city clerk a surety in the form of a certified check in an amount to be determined by the city council. All surety bonds and contracts shall be approved as to form by the city attorney. If the successful bidder shall not, within ten (10) days after the award, enter into a contract, and file the required surety, the bidder shall forfeit the surety which accompanied the bid. A copy of each contract shall be filed with the city clerk.
- (c) The city council may waive the competitive bidding requirement for purchases or articles, commodities, supplies, materials, equipment, and contractual services if the city council determines that exigent circumstances exist or that there is no advantage to the city to proceed by competitive bids. The city council may also waive the competitive bidding requirement when the interests of the city would be best served by participation in certain procurement programs offered through the state that allow local communities to benefit from the purchasing power of the state.
- (d) Any employee who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

**Sec. 2-16. Purchases from approved vendors.**

- (a) Notwithstanding the foregoing sections, purchases from approved vendors for routine or operational articles, commodities, supplies, materials, equipment and contractual services shall be made pursuant to the provisions of this section.
- (b) For each fiscal year, the city council may approve a list of vendors (the “approved vendor” or “approved vendors”) from whom the city may purchase operational or maintenance articles, commodities, supplies, materials, equipment and contractual services, other than professional services during that fiscal year.
- (c) The city manager or his or her designee may authorize purchases from approved vendors in accordance with the approved budget, without the need to receive competitive bids for the purchases and without further approval of the city council.

**Sec. 2-17. Contracts for professional services.**



- (a) As used in this chapter, “professional services” shall mean services typically performed by lawyers, accountants, financial advisors, architects, engineers, consultants, design-build professionals, and other similar professionals hired to make judgments based on their specialized education and knowledge. A contract for professional services may provide for the purchase of all materials and construction or installation needed in order to complete the service.
- (b) The procurement of professional services shall be conducted by one of the following methods:
  - (1) The city may request qualifications from any and all professionals or entities authorized to perform the desired services, and may select a qualified candidate after conducting interviews.
  - (2) The city manager may recommend a particular professional or entity to the city council along with an explanation of how such professional or entity was selected for consideration.
- (c) Contracts for professional services must be approved by majority vote of the city council.

#### **Sec. 2-18. Purchases through state bid contracts.**

Whenever the city purchases items from a state bid contract, the provisions of sections 2-13 through 2-15 shall be deemed to have been complied with.

#### **Sec. 2-19. Purchasing order and change orders.**

- (a) A city purchasing order shall be initiated by the department supervisor, finance department, and/or city manager and forwarded to the vendor on all items purchased or contracted under the authority of sections 2-13 through 2-16.
- (b) The city manager shall have the authority to execute the following capital construction project change orders:
  - (1) Change orders which result in a reduction in cost but do not alter the general scope of the project.
  - (2) Change orders in emergency situations as provided in section 2-20.
  - (3) Change orders within the budget of a capital construction project which result in an additional contract amount if the accrued cost of all the change orders to date relative to that contract do not exceed a ten percent (10%) increase of the original contract amount, provided the general scope of work is not altered.
- (c) All change orders not included in subsection (b) of this section shall be effective only after approval of the city council. If such approval is given, the city manager is hereby authorized to execute change orders.

#### **Sec. 2-20. Emergency purchases.**

In case of an emergency which requires immediate purchase of supplies or contractual services, the city manager shall be empowered to purchase or authorize purchases on the open market, at the lowest obtainable price, any necessary contractual services or supplies. A full report of the circumstances of any emergency purchase shall be reported to the city council by the city manager at the next regularly scheduled city council meeting or otherwise as soon as reasonably possible.

#### **Sec. 2-21. Additional purchasing functions.**

- (a) *Sales tax exemption certificates.* The city is exempt from sales tax on all purchases. However some vendors want the municipality to provide a sales tax exemption certificate. (MI Form 3372). A copy is available at City Hall. The city's tax identification number is printed on the purchase order.
- (b) *Request for taxpayer identification number and certifications.* The city is required to file an information return (MI Form 1099) with the IRS for all vendors that are required to pay backup

withholdings. All city employees authorized to make purchases for the city shall request the MI form W-9 from all vendors. A copy is available online or at City Hall. No payments will be made without a completed W-9 filed with the finance department.

#### **Sec. 2-22. Disposition of Unclaimed Property.**

The city shall report unclaimed property to the state as required by the Uniform Unclaimed Property Act, 1995 PA 29, as amended, MCL 567.221 *et seq.* If the state administrator declines to receive any abandoned property reported by the city under the act, the city manager may sale, donate, or otherwise dispose of the property by any reasonable means and shall deposit the proceeds of any sale into the general fund.

### **Article III – Municipal Ordinance Violations Bureau**

#### **Sec. 2-31. Definitions.**

The following words, terms or phrases, as used in this article, shall have their given meanings:

*Act* means Act 236 of the Public Acts of Michigan of 1961, as amended, MCL 600.101 *et seq.*

*Authorized city official* means the city manager, police officer, special police officer, fire chief, fire inspector appointed by the fire chief, zoning administrator, building official, or other personnel of the city authorized by the city manager to issue municipal civil infraction citations or municipal civil infraction violation notices.

*Bureau* means the City of Allegan Municipal Ordinance Violations Bureau as established by this article.

*Municipal civil infraction action* means a civil action in which the defendant is alleged to be responsible for municipal civil infraction.

*Municipal civil infraction citation* means a written citation or notice prepared by an authorized city official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the persons cited.

*Municipal civil infraction violation citation or notice* means a written notice prepared by an authorized city official, directing a person to appear at the city municipal ordinance violations bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the city, as authorized under the act.

#### **Sec. 2-32. Commencement of a municipal civil infraction action.**

A municipal civil infraction may be commenced upon the issuance by an authorized city official of: (1) a municipal civil infraction citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the city municipal ordinance violations bureau. If an admission of responsibility is not made and the civil fine and cost, if any, prescribed by the ordinance for the violation are not paid at the municipal ordinance violations bureau, a citation may be filed with the court and a copy of the citation may be served by first-class mail upon the alleged violator at his or her last known address.

#### **Sec. 2-33. Municipal ordinance violations bureau.**

A municipal ordinance violations bureau is established to accept admissions of responsibility for municipal civil infractions and to collect and retain civil fines and costs as prescribed by this Code or any ordinance. The municipal ordinance violations bureau shall be under the supervision and control of the city's chief of police, or his or her designee.

#### **Sec. 2-34. Municipal ordinance violations bureau; location; employees.**

The bureau shall be located within City Hall. A subsequent location for the bureau may be established by resolution of the city council. The city manager shall appoint qualified city employees to administer the bureau and adopt rules and regulations for its operation.

**Sec. 2-35. Municipal ordinance violations bureau; disposition of violations.**

The bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the bureau. Nothing in this article shall prevent or restrict the city from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the bureau shall not prejudice a person or in any way diminish the person's rights, privileges and protection accorded to that person by law.

**Sec. 2-36. Bureau limited to accepting admissions of responsibility.**

The scope of the bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

**Sec. 2-37. Municipal civil infraction violation notices.**

Municipal civil infraction violation notices shall specify the time by which the alleged violator must appear at the bureau, the methods by which an appearance may be made, the address and telephone number of the bureau, the hours which the bureau is open, the amount of the fine scheduled for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_  
NAYS: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023

## Chapter 2 – Administration

### Article I – City Council

#### ~~CITY COUNCIL~~

#### **Sec. 2-~~26~~1. Purpose and Intent.**

- (a) City residents and property owners are entitled to have fair, ethical and accountable local government that has earned the ~~public's~~public's full confidence for integrity.
- (b) The effective functioning of democratic government requires that public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; public officials be independent, impartial and fair in their judgment and actions; public office be used for the public good, not for personal gain; and public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.
- (c) This ~~Article~~Article is intended to assure public confidence in the integrity of local government and its effective and fair operation.

#### **Sec. 2-~~27~~2. Meetings.**

- (a) The council shall hold its regular meetings on the second and fourth Mondays of each month.
- (b) All regular council meetings shall be held in the Allegan City Hall in the city or at such other place at the council may from time-to-time designate by resolution.
- (c) Regular council meetings shall begin at 7:00 p.m., unless the council shall by resolution from time-to-time designate a different hour for the meeting.
- (d) Special meetings shall be noticed out and held as provided by the Michigan Open Meetings Act 1976 PA 267, MCL 15.261 *et seq.*

#### **Sec. 2-~~28~~3. Council Code of Ethics.**

Members of the council shall:

- (a) *Act in the public interest.* Recognizing that stewardship of the public interest must be their primary concern, council members will work for the common good of the people of Allegan and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims, and transactions coming before the council. Council members shall also abide by the model of excellence provided for below in ~~sections~~subsection (c).
- (b) *Comply with applicable law.* Council members shall comply with the laws of the nation, the state, and the city in the performance of their public duties. These laws include, but are not limited to: (i) the United States and Michigan constitutions, (ii) federal and state statutes, rules and regulations, (iii) the Allegan City Charter, (iv) Allegan city ordinances, (v) Allegan city policies, (vi) council resolutions, (vii) city contractual obligations, (viii) requirements of any permits or other approvals issued to the city by federal or state agencies, and (ix) orders of any courts or administrative agencies of competent jurisdiction. This includes, without limitation, those pertaining to conflicts of interest, contracts with public entities, election campaigns, financial disclosures, employer responsibilities, and open processes of government.
- (c) *Respect for process.* Council members shall perform their duties in accordance with the processes and rules of order established by the council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of council policy decisions by city staff.
- (d) *Prepare for and conduct public meetings.* Council members shall prepare for public issues, listen courteously and attentively to all public discussions before the body, and focus on the business at hand.

They shall refrain from interrupting other speakers, making comments not germane to the business of the body, or otherwise interfering with the orderly conduct of meetings.

(e) *Communicate pertinent information.* Council members shall publicly share substantive information that is relevant to a matter under consideration by the City Council which they may have received from sources outside of the public decision-making process.

(f) *Provide full disclosure.*

(1) Council members in the performance of their public duties shall not act upon any matter in which they have a material financial interest, or where they have a legal or fiduciary duty to another organization or entity or personal relationship that may give the appearance of a conflict of interest, without disclosing the full nature and extent of the interest to the other members of the council on the official record. Such disclosure must be made before the time to perform their duty or concurrently with the performance of the duty.

(2) The disclosure required by this subsection shall not supplant, but instead shall supplement, any disclosure of a personal, contractual, financial, business, employment or pecuniary interest required by law.

(g) *Avoid inappropriate gifts, favors, and loans.*

(1) A council member shall refrain from financial and business dealings that would tend to reflect adversely on the council member impartiality, interfere with the performance of their public duties or exploit their official position. A council member should not take any special advantage of services, goods or opportunity for personal gain that is not available to the public in general.

(2) A council member and any family member claimed as a dependent of the council member shall refrain from soliciting or accepting any gifts, loans or favors except that a council member and a family member claimed as a dependent of the council member may:

(i) Accept a gift or honorarium, not exceeding a value of \$100.00, for services rendered in the performance of their public duties or other activity devoted to the improvement of cities, communities and the lives of citizens.

(ii) Accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan in the regular course of business from a lending institution on the same terms as generally available to the public; and a scholarship, grant or fellowship awarded on the same terms as applied to other applicants.

(iii) Accept any other gift, favor or loan only if the donor is not a person or entity whose interests have come or are likely to come before the council.

(iv) Solicit and accept campaign contributions.

(h) *Properly treat confidential information.* –Council members shall respect the confidentiality of information concerning the property, personnel or affairs of the city. They shall neither disclose nor divulge to an unauthorized person confidential information acquired in the course of their duties in advance of the time prescribed for its authorized release to the public without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

(i) *Use city resources only for city purposes.* Public resources, including city staff time, equipment, supplies, and facilities, not available to the public in general shall only be used for the benefit of the public and not for a council ~~member's~~member's personal or private use.

(j) *Refrain from representing private interests.* In keeping with the role of council members as stewards of the public interest, a council member shall not appear on behalf of the private interests of third parties before the council or any board, committee, commissions, city staff or any proceeding of the City. For

purposes of this section, the term “third parties” includes the council member’s spouse and family members. Notwithstanding the forgoing, a council member may represent his or her own interests, including in matters involving property owned jointly with the council member’s spouse or other persons. For example, a council member may appear before the City’s historic district commission in a proceeding involving the council member’s home.

(k) *Accurately represent city actions and policies.* Councilmembers shall represent the official policies or positions of the city and the council to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, council members shall neither state nor imply that they represent the opinions or positions of the council or the city.

(l) *Act only within their council role.*

(1) Council members shall respect and adhere to the council-manager structure of city government as provided the Allegan City Charter. In this structure, the council determines the policies of the city with the advice, information, and analysis provided by the public, subordinate boards, committees and commissions, and City staff.

(2) Council members therefore shall not seek to participate in or interfere with the administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement council decisions, actions or policies.

(m) *Maintain the independence of city boards and commissions.* Because of the value of the independent advice of subordinate boards, committees, commissions, and other bodies to the public decision-making process, a council members shall, except when the council member is a member of the public body, limit their participation in the proceedings of such subordinate public bodies to the communication of requested information and providing factual information relevant to the discussion at hand and shall not otherwise attempt to unduly influence the deliberations or outcomes of the proceedings.

(n) *Maintain and support a positive workplace environment.*

(1) Council members shall support the maintenance of a positive and constructive workplace environment for city employees and for citizens and businesses dealing with the city. Council members shall recognize their special role in dealings with city employees so as to in no way create the perception of inappropriate direction to staff nor, except for the purpose of inquiry, give specific orders to subordinates of the city manager or city attorney.

(2) Because council member actions and comments contribute to the environment in which all city employees must work, in order to create and promote a positive work environment under no circumstances shall a council member, either in public or private, intimidate, humiliate, or otherwise abuse a city employee.

## **Sec. 2-~~294~~. Compliance and enforcement.**

(a) This article establishes minimum standards of ethical conduct for council members. Violations therefore constitute official misconduct and malfeasance in office.

(b) Council members each have the primary responsibility to assure that they understand and meet the standards in this article and that the public can continue to have full confidence in the integrity of government.

(c) Formal disciplinary procedures will be undertaken in serious situations or those potentially so. When it appears that such measures may become necessary, proper and tactful handling of the situation is of prime importance. Therefore, efforts will first be undertaken to attain satisfactory resolution of the matter quietly and informally.

(d) A council member shall intervene when the council member learns of actions of another council member that appear to violate this article. The exclusive procedure for intervention shall be as follows:

(1) Within 30 days of acquiring reasonable suspicion of a violation, ~~a~~ the reporting council member shall notify the mayor and provide a detailed written account of the facts giving rise to reasonable suspicion. In cases where the mayor is suspected of a violation, notice shall be given to the mayor pro tem. The notification and written account shall be sent via email, using official City email accounts. Council members should be aware that all emails and other written communications transmitted during this process may be subject to disclosure under the Freedom of Information Act.

(2) Upon receiving notice of a suspected violation, the mayor (or, in the case of a suspected violation involving the mayor, the mayor pro tem) shall arrange a meeting with the suspected council member and the city attorney as soon as reasonably possible. The suspected council member has an obligation to participate in the meeting, and failure to do so shall be considered a violation of this ordinance.

(3) During the meeting, the mayor or mayor pro tem shall: (i) explain the nature and factual basis for the suspected violation; (ii) provide the suspected council member an opportunity to respond; and (iii) to the extent the circumstances allow, discuss possible ways to informally resolve the matter without further proceedings. For example, the suspected council member may offer to apologize, retract a previous statement, or take other corrective action. The mayor or mayor pro tem shall be responsible for leading the discussion. The role of the city attorney is to answer any procedural or legal questions that might arise during the discussion, and to assist the mayor or mayor pro tem in preparing a summary of the meeting for purposes of subsection (d)(4) below.

(4) Following the meeting, the mayor or mayor pro tem shall, with the help of the city attorney, prepare a written summary of the meeting. The summary shall be sent my email to the full City Council and the city manager.

(5) After reviewing the summary, any three council members may require that the full Council hold a public hearing to determine whether a violation of this article occurred and, if so, what sanctions shall be imposed for the violation. To request a public hearing, a council member shall send an email addressed only to the city manager, city clerk, and city attorney. Reasons for requesting a public hearing include: (i) the suspected councilmember refused to meet as required by subsection (d)(3), (ii) the meeting with the mayor or mayor pro tem and the suspected council member has occurred without a satisfactory outcome, (iii) there is reason to believe the suspected council member has repeatedly violated this article, or (iv) the violation is viewed to be especially serious.

(6) If the city manager receives requests for a public hearing from three or more Council members, the city manager shall schedule a public hearing for a regular or special meeting of the City Council.

(c) During the public hearing, the following process shall be followed to determine whether a violation has occurred and what sanctions, if any, shall be imposed:

(1) All council members, including the one accused of a violation, shall be provided a written summary of the facts giving rise to the charge(s) against the council member believed to have violated this article at least 10 days prior to the date of the public hearing;

(2) The mayor or, if the mayor is either the subject of the alleged violation or is unavailable, the mayor pro tem shall preside over the public hearing. If both the mayor and the mayor pro tem are subjects of the perceived violation, then the most tenured council member shall preside over the public hearing(s). If there is a question as to which council member is most tenured, then a majority vote of the remaining council members shall determine who between them shall preside.

(3) The presiding council member may determine whether the evidence presented against the council member, or in defense of the council member, is germane to the charge(s) against the council member and preclude its consideration if he or she determines it. The presiding council member may seek guidance from the city attorney regarding hearing procedural and evidentiary issues.

(4) The hearing shall be conducted informally.

(i) Without usurping the power granted to the council under City Charter section 5.19, the council is discouraged from issuing any subpoenas to compel witnesses to testify at a hearing under this article.

(ii) Witnesses shall be sworn by the city clerk or the clerk's designee if the designee is a notary public otherwise legally authorized to administer oaths.

(iii) The city attorney shall be present at the hearing and shall represent the council as a whole. The city attorney shall address procedural, evidentiary, or legal questions upon the request of the presiding council member, but shall not opine as to whether or not a violation of this ordinance has occurred.

(iv) Neither the federal nor state rules of evidence or civil procedure shall apply.

(v) Any council member(s) may ask questions of witnesses, except as otherwise provided in this subsection ~~(f)~~.

(vi) The accused council member may present witnesses in his or her defense after the presiding council member has presented all evidence supporting a violation. The accused council member may not cross-examine witnesses but shall be provided 10 minutes to present closing comments at the conclusion of evidence to respond to the evidence presented against him or her. The accused council member may request and be granted not more than one additional 10-minute period for closing comments (not to exceed 20 minutes total) if a motion is made, supported, and approved by majority vote of the remaining council members. The accused council member may, at his or her own expense, retain an attorney to perform or assist with the functions permitted in this ~~subsection~~ subsection.

(vii) At the conclusion of the presentation of evidence or the closing comments of the accused council member, whichever is later, council members (except the accused council member) shall vote to determine whether or not a violation(s) of this article occurred by a simple majority vote of councilmembers present being required to make the determination.

(f) The council may impose sanctions on a council ~~members~~ member violating this article. After a majority vote finding a violation of this article, a second majority vote shall determine what sanctions, if any, shall be imposed.

(1) Sanctions may include reprimand, formal censure, loss of committee assignment, restrictions on budget or travel, and a request to the governor for removal from office in the manner and for the causes provided by law.

(2) Sanctions shall be determined based upon the perceived severity level (1, 2, or 3) of the violation, with the following guidance:

(i) For a level 1 violation, penalty options shall include a verbal reprimand during a conversation with the mayor or mayor pro tem, or an additional and/or greater sanction as may be determined appropriate by the majority of the council voting. A violation of the following subsections of section 2-~~283~~ – (2)(c), (d), (e), (g)(1)~~, (g)(2)~~, (i), (j), (k), (~~12A-1~~)(1), (l)(2)~~, (m)~~, or (n) shall minimally result in a level 1 sanction.

(ii) For a level 2 violation, the penalty options shall include censure, which shall be defined as a formal council resolution for specified conduct and/or a greater sanction as may be determined appropriate by the majority of the council voting. A second level 1 violation within 6 months of a prior violation found by the council, or a first violation following subsections of section 2-~~283~~ – (a), (f)(1), (g)(2)~~, (h)~~ – shall minimally result in a level 2 sanction. Depending upon the severity of the violation, a first violation of subsection 2-~~283~~(g) may result in a level 2 sanction.



(iii) For a level 3 violation, the penalty options shall include censure and/or a request to the governor for removal. A third level 1 violation, or a second level 2 violation within 6 months of a prior violation found by the council, or a first violation of 2-~~283~~(b) may result in a level 3 sanction.

**Sec. 2-~~305~~. No Invalidation.**

A violation of this article shall not be a basis for invalidating a council decision or action.

**Sec. 2-~~346~~. Implementation.**

(a) Because council member compliance with this article is expected and all council members are expected to engage in its enforcement, council members must be thoroughly familiar with this article. To aid this familiarity, ~~a biennial workshop shall be held after the general election in every odd numbered year not later than 60 days after the general election~~ periodic workshops shall be held for training to be provided by Michigan Municipal League (MML), the city attorney, or others retained by the city regarding the role and duties of a council members and the requirements of this article. Unless excused by a majority vote of the remaining council members, all council members shall attend this workshop, or a make-up session as soon as can be practicably scheduled. ~~Anyone appointed to complete the vacated term of a previously elected council member pursuant to Charter section 5.8 shall attend a make up session of the biennial workshop as provided for in this subsection within 60 days of his or her appointment.~~

(b) Every year, at the meeting during which the council elects the mayor and mayor pro tem, all council members shall sign the following statement affirming that they have read and understand this article. The statement signed by each council member and retained by the city clerk.

As a member of the Allegan City Council, I agree to uphold the Code of Ethics in Chapter 2, article HI of the Code of Ordinances, City of Allegan, Michigan. In addition, I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives, and contributions;
- Help create an atmosphere of respect and civility where individual members, City staff, and the public are free to express their ideas and work to their full potential;
- Respect the dignity and privacy of individuals and organizations;
- Respect and maintain the nature of confidential and privileged information and opinions acquired as a result of my position;
- Conduct my public affairs with honesty, integrity, fairness and respect for others;
- Avoid and discourage conduct that is divisive or harmful to the best interests of Allegan; and
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit.

I affirm that I have read and fully understand the Code of Ethics, Chapter 2, article HI of the Code of Ordinances, City of Allegan, Michigan.

---

Signature/Date

**Article II – Purchasing and Unclaimed Property**

**Sec. 2-~~32~~. Review.**

~~The council shall annually, no later than August, review this article and initiate any amendments no later than the second City Council Meeting in September.~~

**ARTICLE III. OFFICERS**

**ARTICLE IV. DEPARTMENTS**

## ~~ARTICLE V. BOARDS AND COMMISSIONS~~

## ~~ARTICLE VI. EMPLOYEE BENEFITS~~

### ~~Sec. 2-251. Plan adopted.~~

~~The city hereby adopts and incorporates by reference the City of Allegan Money Purchase Pension Plan and Trust Agreement effective July 1, 1989, which is set forth and on file in the office of the city clerk.~~

## ~~ARTICLE VII. FINANCE~~

### ~~DIVISION 1. GENERALLY~~

### ~~DIVISION 2. PURCHASING REGULATIONS~~

#### ~~Sec. 2-321.~~ **11. Purchasing agent, duties and application.**

- (a) *Purchasing agent.* The city manager shall be the purchasing agent of the city.
- (b) *Duties.* The purchasing agent shall have the following powers and duties:
  - (1) *Bulk purchases.* Exploit the possibilities of buying in bulk so as to take full advantage of discounts.
  - (2) *Encourage competition.* Endeavor to obtain as full and open competition as possible on all purchases and sales.
  - (3) ~~*Federal*~~ *State and federal* tax exemptions. Act so as to procure for the city all state and federal tax exemptions to which it is entitled.
  - (4) *Forms.* Prescribe and maintain such forms as are reasonable and necessary for the operation of this article.
  - (5) *Minimize expenditure.* Act to procure for the city the highest quality in supplies and contractual services at the least expense to the city.
  - (6) *Purchasing analysis.* Keep informed of current developments in the field of purchasing, prices, market conditions and new products in the field of purchasing by other governmental jurisdictions, national technical societies, and trade associations having national recognition and private businesses and organizations.
  - (7) *Rules and regulations.* Establish and amend, when necessary, all rules and regulations authorized by this article and any others necessary to its operation.
  - (8) *Approved vendors list.* Prepare, ~~adopt~~ and maintain ~~an approved~~ vendor list as approved by Council.
  - (9) *Disqualification of bidders.* Have the authority to recommend Council to declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the municipality for a stated period of time.
  - (10) *Cooperation with the department supervisors and finance director.* Cooperate with the department supervisors and finance director so as to secure for the city the maximum efficiency in budgeting and accounting.
  - (11) *Other.* Perform other duties as may be designated or ordained by the city council.
- (c) *Application.* ~~Purchases~~ This article shall apply to all purchases and contracts for procurement of articles, commodities, supplies, materials, equipment, contractual services, and professional services entered into by the city, unless otherwise provided ~~in this article.~~ It shall apply to every expenditure of public funds for public purchasing regardless of its source. No procurement shall prevent any public agency

from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

**Sec. 2-322. ~~12.~~ Purchase for items ~~or services under one~~ less than ten thousand dollars (\$~~10,000.00~~).**

- (a) The ~~department supervisors, city manager~~ or other employees designated by the city manager, subject to budgetary appropriations, may make and approve purchases of articles, commodities, supplies, materials, equipment, and contractual services, ~~in an amount not to exceed one~~ where the estimated cost is less than ten thousand dollars (\$10,000.00) in accordance with the purchasing procedures set forth in ~~subsection~~ subsections (b), (c), and (d) below, without further approval of the city council.
- ~~(b) All purchases should be made by soliciting competitive~~ When acting under this section, the employee shall endeavor to purchase items at prices reflecting good value.
- ~~(b)~~ Competitive bidding shall not be required for purchases under this section. Department supervisors The employee shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.
- (c) The ~~department supervisor~~ employee shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require a signature of the ~~purchaser~~ employee as well as the city manager's or department ~~supervisor's~~ head's signature and general ledger account code.
- ~~(d) Any employee who shall use the purchase procedure set forth in this section where it is not in fact necessary, or~~ (d) Any employee who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

**Sec. 2-323. ~~13.~~ Purchase for items or services between ~~one~~ ten thousand dollars (\$~~1,000.00~~) and less than five thousand dollars (\$5,000.00).**

- ~~(a) The city manager or other employees designated by the city manager, subject to budgetary appropriations, may make and approve purchases of articles, commodities, supplies, materials, equipment and contractual services where the estimated cost exceeds one thousand dollars (\$1,000.00) but less than five thousand dollars (\$5,000.00) in accordance with the purchasing procedures set forth in subsection (b), (c), and (d) without further approval of the city council.~~
- ~~(b) All purchases should be made by soliciting competitive prices by obtaining at least two (2) written quotes to be submitted to the city manager for his authorization. Competitive bidding shall not be required for purchases under this section. The city manager shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.~~
- ~~(c) The city manager shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require a signature of the purchaser as well as the city manager's signature and general ledger account code.~~
- ~~(d) Any employee who shall use the purchase procedure set forth in this section where it is not in fact necessary, or who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.~~

**Sec. 2-324. ~~Purchase for items or services between five thousand dollars (\$5,000.00) and less than twenty thousand dollars (\$20,000.00).~~**

- (a) For all purchases, subject to budgetary appropriations, of articles, commodities, supplies, materials, equipment, contractual services, and other professional services where the estimated cost exceeds ~~five~~ ten thousand dollars (\$~~5~~ 10,000.00) but less than twenty thousand dollars (\$20,000.00), and in

accordance with the purchasing procedures set forth in subsection (b), (c), and (d), the city manager shall obtain at least two (2) competitive quotations and shall submit quotes to city council with a recommendation for its approval. No purchase order shall be released or voucher drawn until the city council has approved the purchase.

- (b) All purchases should be made by soliciting competitive prices by obtaining at least two (2) written quotes to be submitted to the city manager for his authorization. ~~Competitive bidding shall not be required for purchases under this section. The city manager shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.~~
- ~~(c) The city manager shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require a signature of the purchaser as well as the city manager's signature and general ledger account code.~~
- ~~(d) Any employee who shall use the purchase procedure set forth in this section where it is not in fact necessary, or, unless such requirement is waived by the city council. Competitive bidding shall not be required for purchases under this section. The city manager shall make sure that an appropriation has first been approved by the city council, that a sufficient unencumbered balance remains in the appropriation, and that sufficient funds will be available to cover the claim or meet the obligation when it becomes due and payable.~~
- (c) The city manager shall promptly turn in a copy of the receipt for purchased items to the finance department. The receipt will also require a signature of the purchaser as well as the city manager's signature and general ledger account code.
- (d) Any employee who shall split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

**Sec. 2-325.—14. Purchases for items or services more than twenty thousand dollars (\$20,000.00) and bid process.**

- (a) All contracts and purchases, where the estimated cost exceeds twenty thousand dollars (\$20,000.00), and in accordance with the purchasing procedures set forth in this section, must be approved by city council and shall be awarded on written contracts using the following procedure:
  - (1) Notices inviting sealed competitive bids shall be published ~~at least once in a newspaper published or circulated in on~~ the city's website and, ~~if the city council shall deem it necessary, at least once in~~ such other locations or publications as the city ~~council shall determine~~ manager deems appropriate, which will reasonably notify any persons that might be interested in bidding on the contract. Notices may also be ~~mailed sent~~ to those persons who would reasonably be expected to bid upon such purchases. Failure to notify all such persons shall in no way invalidate any contracts entered into hereunder.
  - (2) The notice inviting bids shall provide the following:
    - (A) ~~a.~~ Specifications of the articles or services to be purchased;
    - (B) ~~b.~~ The amount of surety to be submitted with the bid;
    - (C) ~~c.~~ The surety to be given with the contract;
    - (D) ~~d.~~ The time and place for opening bids;
    - (E) ~~e.~~ The conditions of the award of the contract, including any preference and the amount of such preference expressed as a percentage of the bid price which may be considered in determining the lowest and best bidder; and

- (F) ~~f~~ The city reserves the right to reject any or all bids and to award the contract in the city's best interest, and the city may select a bidder other than the lowest bidder in accordance with the terms stated in the notice.
- (3) At least five (5) calendar days shall intervene between the date of last publication of said notices and the final date for submitting the bids.
- (4) All bids shall be submitted sealed to the city clerk and shall be accompanied by surety in the form of a certified check in such amount as the city council shall prescribe in the public notice inviting bids. The bids shall be opened in public at the time and place stated in the newspaper notices.
- (5) When all bids received are for the same total amount or unit price, and when the public interest will not permit the delay of re-advertising for bids, the city manager, at the direction of the city council, may purchase the commodity in the open market, provided the price paid in the open market shall not exceed any bid price submitted for the same commodity. Otherwise, the contract shall be awarded to the lowest and best bidder whose bid is most advantageous to the city. In determining which bidder is the most responsible bidder, the city manager and city council may consider the following:
- (A) ~~a~~ The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (B) ~~b~~ Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
- (C) ~~c~~ The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (D) ~~d~~ The quality of performance of previous contracts or services of the bidder;
- (E) ~~e~~ The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
- (F) ~~f~~ The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (G) ~~g~~ The amount of which is expressed as a percentage of the bid price and stated in the notice inviting bids;
- (H) ~~h~~ The quality, availability and adaptability of the supplies or contractual services to the particular use required;
- (I) ~~i~~ The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- (J) ~~j~~ The number and scope of conditions attached to the bid;
- (K) ~~k~~ If the bidder is a local vendor who may be able to provide services more efficiently or provide local jobs.
- (6) The city manager shall submit the lowest and best bid to city council with a recommendation for its approval. No purchase order shall be released or voucher drawn until the city council has approved the bid.
- (b) Before any contract is executed, the successful bidder shall file with the city clerk a surety in the form of a certified check in an amount to be determined by the city council. All surety bonds and contracts shall be approved as to form by the city attorney. If the successful bidder shall not, within ten (10) days after the award, enter into a contract, and file the required surety, the bidder shall forfeit the surety which accompanied the bid. A copy of each contract shall be filed with the city clerk.

~~(e) All contracts in excess of fifty thousand dollars (\$50,000.00) shall be covered by a surety bond in the amount of the total contract.~~

~~(d)(c)~~ The city council may waive the competitive bidding requirement for purchases or articles, commodities, supplies, materials, equipment, and contractual services, ~~where the estimated cost does not exceed twenty thousand dollars (\$20,000.00)~~ if the city council determines that exigent circumstances exist or that there is no advantage to the city to proceed by competitive bids. The city council may also waive the competitive bidding requirement when the interests of the city would be best served by participation in certain procurement programs offered through the state that allow local communities to benefit from the purchasing power of the state.

~~(ed)~~ Any employee who shall ~~use the purchase procedure set forth in this section where it is not in fact necessary, or who shall~~ split purchases or cause them to be split in order to evade any of the provisions of this section shall be guilty of misfeasance and such act shall be cause for dismissal or removal from office.

#### **Sec. 2-326-~~15~~. Purchases from approved vendors.**

(a) Notwithstanding the ~~provisions of foregoing~~ sections ~~2-322 through 2-325~~, purchases from approved vendors for routine or operational articles, commodities, supplies, materials, equipment and contractual services shall be made pursuant to the provisions of this section.

(b) For each fiscal year, the city council may approve a list of vendors (the ~~"approved vendor"~~ or ~~"approved vendors"~~) from whom the city may purchase ~~routine~~, operational or maintenance articles, commodities, supplies, materials, equipment and contractual services, other than professional services ~~("routine purchases")~~, during that fiscal year.

(c) ~~City~~The city manager or his or her designee may authorize ~~routine~~ purchases from approved vendors in accordance with the approved budget, without the need to receive competitive bids for the ~~routine~~ purchases and without further approval of the city council.

#### **Sec. 2-327-~~16~~. Contracts for professional services.**

(a) As used in this chapter, ~~"professional services"~~ shall mean services typically performed by lawyers, accountants, financial advisors, architects, engineers, consultants, design-build professionals, and other similar professionals hired to make judgments based on their specialized education and knowledge. A contract for professional services may provide for the purchase of all materials and construction or installation needed in order to complete the service.

(b) The procurement of professional services shall be conducted by one of the following methods:

(1) The city may request qualifications from any and all professionals or entities authorized to perform the desired services, and may select a qualified candidate after conducting interviews.

(2) The city manager may recommend a particular professional or entity to the city council along with an explanation of how such professional or entity was selected for consideration.

(c) Contracts for professional services must be approved by majority vote of the city council.

#### **Sec. 2-328-~~17~~. Purchases through state bid contracts.**

Whenever the city purchases items from a state bid contract, the provisions of sections 2-~~323—13 through 2-325~~15 shall be deemed to have been complied with.

#### **Sec. 2-329-~~18~~. Purchasing order and change orders.**

(a) A city purchasing order shall be initiated by the department supervisor, finance department, and/or city manager and forwarded to the vendor on all items purchased or contracted under the authority of sections 2-~~323—13 through 2-325~~15.



- (b) The city manager shall have the authority to execute the following capital construction project change orders:
- (1) Change orders which result in a reduction in cost but do not alter the general scope of the project.
  - (2) Change orders in emergency situations as provided in section 2-~~330~~21.
  - (3) Change orders within the budget of a capital construction project which result in an additional contract amount if the accrued cost of all the change orders to date relative to that contract do not exceed a ten percent (10%) increase of the original contract amount, provided the general scope of work is not altered.
- (c) All change orders not included in subsection (b) of this section shall be effective only after approval of the city council. If such approval is given, the city manager is hereby authorized to execute change orders.

**Sec. 2-~~330~~-19. Emergency purchases.**

In case of an emergency which requires immediate purchase of supplies or contractual services, the city manager shall be empowered to purchase or authorize purchases on the open market, at the lowest obtainable price, any necessary contractual services or supplies. A full report of the circumstances of any emergency purchase shall be ~~filed with~~reported to the city council by the city manager ~~within fifteen (15) days after such purchase and shall be entered in at~~ the next regularly scheduled city council minutes meeting or otherwise as soon as reasonably possible.

**Sec. 2-~~331~~-20. Additional purchasing functions.**

- (a) *Sales tax exemption certificates.* The city is exempt from sales tax on all purchases. However some vendors want the municipality to provide a sales tax exemption certificate. (MI Form 3372). A copy is available at City Hall. The city's tax identification number is printed on the purchase order.
- (b) *Request for taxpayer identification number and certifications.* The city is required to file an information return (MI Form 1099) with the IRS for all vendors that are required to pay backup withholdings. All city employees authorized to make purchases for the city shall request the MI form W-9 from all vendors. A copy is available online or at City Hall. No payments will be made without a completed W-9 filed with the finance department.

**~~DIVISION 3. — DISPOSITION OF UNCLAIMED PROPERTY~~**

**Sec. 2-~~336~~-21. Disposition of Unclaimed Property.**

~~The provisions of this division shall apply to all unclaimed money or property, other than motor vehicles, which is recovered by the city and is not claimed within six (6) months after recovery.~~ city shall report unclaimed property to the state as required by the Uniform Unclaimed Property Act, 1995 PA 29, as amended, MCL 567.221 *et seq.* If the state administrator declines to receive any abandoned property reported by the city under the act, the city manager may sale, donate, or otherwise dispose of the property by any reasonable means and shall deposit the proceeds of any sale into the general fund.

**Article III – Municipal Ordinance Violations Bureau**

**Sec. 2-~~337~~. Disposition of money.**

~~After the expiration of six (6) months from the date of recovery, any money shall be placed in the general fund of the city.~~

**Sec. 2-~~338~~. Sale procedure.**

~~After the expiration of six (6) months from the date of recovery, any property may be sold at public auction in accordance with the following procedure:~~

- ~~(1) Prior to any auction sale, the city clerk shall post a notice thereof in the police building and the City Hall and shall publish the notice in a newspaper of general circulation in the city at least one (1) week prior to the sale.~~
- ~~(2) The notices shall describe any money recovered or held and also any other property recovered and held, together with the time and place of public sale at which the other property may be purchased by the highest bidder. The highest bidder shall receive a bill of sale for the property bought from the city.~~
- ~~(3) Until the date of the sale, the money or other property may be claimed at the City Hall and, if proof of ownership is provided, such money or other property shall be turned over to the claimant, and the sale shall be cancelled in so far as such property is concerned.~~

~~Sec. 2-339. Disposition of proceeds.~~

~~After the holding of an auction sale, the money received from such sale, after deducting the cost of conducting it, and any other money recovered and held which was included in the notice provided for in section 2-338(1), shall be turned over to the city treasurer to be credited to the general fund.~~

~~Sec. 2-340. Reimbursement of owner.~~

- ~~(a) After notice and sale as provided in this section, the owner may file a claim and, upon proving ownership of the property, shall be reimbursed by the city treasurer in an amount not to exceed the amount paid for such goods at the sale; provided, however, that such a claim must be filed with the city clerk not later than one (1) year after the sale. The period and provisions for claiming ownership hereunder shall also apply to any recovered money which was listed in the notice.~~
- ~~(b) The purchaser of any property sold at auction conducted pursuant to this division shall own the same free of any claims by the previous owner, who shall be limited to filing a claim under subsection (a).~~
- ~~(c) Except as provided in this section, no claim shall be valid to obtain any money or other property recovered after notice and sale as provided in this division, the property and money being considered as abandoned and belonging to the city.~~

~~Sec. 2-341. Disposal of property remaining after sale.~~

~~Any property remaining after the sale may be disposed of as directed by the council.~~

~~ARTICLE VIII. MUNICIPAL ORDINANCE VIOLATIONS BUREAU~~

~~Sec. 2-342.~~ 31. **Definitions.**

The following words, terms or phrases, as used in this article, shall have their given meanings:

*Act* means Act 236 of the Public Acts of Michigan of 1961, as amended, MCL 600.101 et seq.

*Authorized city official* means ~~at~~ the city manager, police officer, special police officer, fire chief, fire inspector appointed by the fire chief, zoning administrator, building official, or other personnel of the city authorized by ~~resolution or ordinance of the city council~~ manager to issue municipal civil infraction citations or municipal civil infraction violation notices.

*Bureau* means the City of Allegan Municipal Ordinance Violations Bureau as established by this article.

*Municipal civil infraction action* means a civil action in which the defendant is alleged to be responsible for municipal civil infraction.

*Municipal civil infraction citation* means a written citation or notice prepared by an authorized city official, directing a person to appear in court regarding the occurrence or existence of a municipal civil infraction violation by the persons cited.



*Municipal civil infraction violation citation or notice* means a written notice prepared by an authorized city official, directing a person to appear at the city municipal ordinance violations bureau and to pay the fine and costs, if any, prescribed for the violation by the schedule of civil fines adopted by the city, as authorized under the act.

**Sec. 2-~~343~~-32. Commencement of a municipal civil infraction action.**

A municipal civil infraction may be commenced upon the issuance by an authorized city official of: (1) a municipal civil infraction citation directing the alleged violator to appear in court; or (2) a municipal civil infraction violation notice directing the alleged violator to appear at the city municipal ordinance violations bureau. If an admission of responsibility is not made and the civil fine and cost, if any, prescribed by the ordinance for the violation are not paid at the municipal ordinance violations bureau, a citation may be filed with the court and a copy of the citation may be served by first-class mail upon the alleged violator at his or her last known address.

**Sec. 2-~~344~~-33. Municipal ordinance violations bureau.**

A municipal ordinance violations bureau is established to accept admissions of responsibility for municipal civil infractions and to collect and retain civil fines and costs as prescribed by this Code or any ordinance. The municipal ordinance violations bureau shall be under the supervision and control of the city's chief of police, or his or her designee.

**Sec. 2-~~345~~-34. Municipal ordinance violations bureau; location; employees.**

The bureau shall be located within ~~the Allegan police department building~~City Hall. A subsequent location for the bureau may be established by resolution of the city council. The ~~chief of police~~city manager shall appoint qualified city employees to administer the bureau and adopt rules and regulations for its operation.

**Sec. 2-~~346~~-35. Municipal ordinance violations bureau; disposition of violations.**

The bureau may dispose only of municipal civil infraction violations for which a fine has been scheduled and for which a municipal civil infraction violation notice has been issued. The fact that a fine has been scheduled for a particular violation shall not entitle any person to dispose of the violation at the bureau. Nothing in this article shall prevent or restrict the city from issuing a municipal civil infraction citation for any violation or from prosecuting any violation in a court of competent jurisdiction. No person shall be required to dispose of a municipal civil infraction violation at the bureau and may have the violation processed before a court of appropriate jurisdiction. The unwillingness of any person to dispose of any violation at the bureau shall not prejudice a person or in any way diminish the person's rights, privileges and protection accorded to that person by law.

**Sec. 2-~~347~~-36. Bureau limited to accepting admissions of responsibility.**

The scope of the ~~bureau's~~bureau's authority shall be limited to accepting admissions of responsibility for municipal civil infractions and collecting and retaining civil fines and costs as a result of those admissions. The bureau shall not accept payment of a fine from any person who denies having committed the offense or who admits responsibility only with explanation, and in no event shall the bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to an alleged violation.

**Sec. 2-~~348~~-37. Municipal civil infraction violation notices.**

Municipal civil infraction violation notices shall specify the time by which the alleged violator must appear at the bureau, the methods by which an appearance may be made, the address and telephone number of the bureau, the hours which the bureau is open, the amount of the fine scheduled for the alleged violation, and the consequences for failure to appear and pay the required fine within the required time.

**~~Sec. 2-349. — Schedule of fines established.~~**

~~Schedule of civil fines payable to the bureau for admissions of responsibility by persons served with municipal ordinance violation notices is hereby established. The fines for the violations listed below shall be as follows:~~

Offense	Fine for 1st Violation	Fine for 2nd Violation	Fine for 3rd Violation
<del>Violations of Chapter 3 (Advertising)</del>	<del>\$50.00</del>	<del>\$150.00</del>	<del>\$300.00</del>
<del>Violations of Chapter 6 (Animals)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 7 (Buildings and Building Regulations)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 11 (Fire Prevention and Protection)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 12 (Garbage and Refuse)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 13 (Historic Preservation)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 15 (Noise)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 16 (Nuisances)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>

<del>Violations of Chapter 18 (Parks and Recreation)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 19 (Peddlers, Solicitors and Transient Merchants)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Chapter 30 (Vegetation)</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00</del>
<del>Violations of Appendix A</del>	<del>50.00</del>	<del>150.00</del>	<del>300.00 (\$1,500.00 for each subsequent offense)</del>

The proposed amendments to Chapter 3 of the City Code would:

1. Provide a more succinct statement of purpose focused on the balance of free speech rights with the need for safe and unobstructed public places and private property rights.
2. Reword and narrow the coverage of certain regulations on the posting of handbills in order to avoid any First Amendment concerns.

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND CHAPTER 3 OF THE CITY OF ALLEGAN, CODE OF ORDINANCES, AND TO PROVIDE UPDATED REGULATIONS ON ADVERTISING THROUGH THE DISTRIBUTION OF HANDBILLS**

The City of Allegan ordains:

Section 1. Amendment. Chapter 3 of the City of Allegan, Code of Ordinances, is hereby amended to read in its entirety as follows:

**Sec. 3-1. Purposes.**

The purpose of this chapter is to regulate the distribution of handbills in order to balance the free speech rights of individuals and organizations who wish to advertise goods or events or otherwise distribute written information with the needs of the community to maintain safe and unobstructed public spaces and private property rights. This chapter seeks to ensure that the distribution of handbills does not interfere with public safety, obstruct pedestrian or vehicular traffic, or create litter or blight in public areas. The regulation of handbills also aims to protect the privacy and property rights of residents and businesses by limiting unsolicited and unwanted distribution of handbills.

**Sec. 3-2. Definitions.**

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

- (a) *Handbill* means any printed or written pamphlet, leaflet, magazine, paper, booklet, or other similar item not included in the definition of newspaper provided below.
- (b) *Newspaper* any newspaper of general circulation as defined by general law, any news or advertising medium duly entered with the United States Post Office in accordance with federal statutes or regulations, and any periodicals or current magazine regularly published and circulated with not less than four (4) issues per year and sold to the general public.

**Sec. 3-3. Posting prohibited in certain public places.**

It shall be unlawful to hang, post, place, paste, put or in any other manner affix any handbill on public infrastructure with City rights-of-ways or other City-owned property, including but not limited to lamp posts, electric poles, telephone poles, trees, bridges, fire hydrants, water towers, etc., except as may be authorized or required by the laws of the United States, the state, or the ordinances of the City. This section shall not be construed as prohibiting persons from distributing handbills on public property directly to persons willing to accept them.

**Sec. 3-4. Distribution in or upon vehicles.**

It shall be unlawful for any person to distribute any handbill in or upon any motor vehicle. The provisions of this section shall not be deemed to prohibit the distribution of any handbill to the owner or other occupant of any motor vehicle who is willing to accept the same.

**Sec. 3-5. Distribution on vacant private premises.**

It shall be unlawful for any person to distribute any handbill in or upon any vacant private premises.

**Sec. 3-6. Distribution on posted private property.**

It shall be unlawful for any person to distribute any handbill upon any premises if there is posted on the premises in a conspicuous location a sign bearing the words, "No Trespassing," "No Peddlers or Agents," "No Advertisements," or any similar notice indicating in any manner that the occupants or owners of the premises do not desire to have handbills left upon the premises.

**Sec. 3-7. Method of distribution on private premises.**

- (1) It shall be unlawful to distribute any handbill in or upon any private premises except by:
  - (a) handing or transmitting the handbill directly to the owner, occupant, or any other person then present in or upon such private premises; or
  - (b) placing or depositing any such handbill in or upon such private in such a manner as to prevent the handbill from being blown or scattered to other premises.
- (2) If a receptacle for handbills is furnished (e.g., in a slot underneath the U.S. postal mailbox), it shall be unlawful to deposit handbills in any location on the premises other than such receptacle.
- (3) Any person distributing handbills from house to house must follow the walks and driveways on the premises and shall not cut across the yard to reach the entrance to the house.
- (4) It shall be unlawful for any person to distribute any handbill on private premises on Sunday and between the hours of 8:00 p.m. of any weekday and 8:00 a.m. of the following day.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023

### **Sec. 3-16. 1. Purposes.**

~~To protect the people of the city against the nuisance of and incident to the promiscuous distribution of handbills and posters with the resulting detriment and danger to public health and safety, the public interest, convenience and necessity requires the regulation thereof, and to that end the purposes of this article are specifically declared to be as follows:~~

- ~~(1) To provide protection against the unlawful activities or operations of dissolute persons of criminal habit or tendencies, representing themselves as handbill distributors, by requiring the registration of all such handbill distributors, together with the names of their employers;~~
- ~~(2) To protect local residents against trespassing by handbill distributors upon the private property of residents if they have given reasonable notice that they do not wish to receive handbills or other advertising matter;~~
- ~~(3) To protect local residents against the health and safety menace and the expense incident to the littering of streets and public places by the promiscuous and uncontrolled distribution of advertising matter and handbills;~~
- ~~(4) To preserve to the residents their constitutional right to receive and disseminate information not restricted under the ordinary rules of decency, good morals, and public order, by distinguishing between the nuisance created by the promiscuous distribution of handbills and posters of an advertising nature, and the right to deliver handbills to all who are willing to receive the same.~~

~~Sec. The purpose of this chapter is to regulate the distribution of handbills in order to balance the free speech rights of individuals and organizations who wish to advertise goods or events or otherwise distribute written information with the needs of the community to maintain safe and unobstructed public spaces and private property rights. This chapter seeks to ensure that the distribution of handbills does not interfere with public safety, obstruct pedestrian or vehicular traffic, or create litter or blight in public areas. The regulation of handbills also aims to protect the privacy and property rights of residents and businesses by limiting unsolicited and unwanted distribution of handbills.~~

### **Sec. 3-17. 2. Definitions.**

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

~~*Distribute* means and includes the process, directly or indirectly, of all distributing, placing, throwing, scattering, or casting of any handbill.~~

- ~~(a) *Handbill* means and includes any printed or written matter, sample or device, dodger, circular, leaflet, pamphlet, newspaper, leaflet, magazine, paper, booklet, or any other printed or otherwise reproduced original or copies of any matter or literature other similar item not included in the definitions definition of a newspaper or poster, provided below.~~

~~*Handbill distributor* means and includes any person engaged or engaging in the business of distributing handbills or posters, other than newspapers distributed to subscribers thereof.~~

- ~~(b) *Newspaper* means and includes any newspaper of general circulation as defined by general law, any news or advertising medium duly entered with the United States Post Office in accordance with federal statutes or regulations, and any periodicals or current magazine regularly published and circulated with not less than four (4) issues per year and sold to the general public.~~

### **Sec. ~~Poster~~ means and includes 3-3. Posting prohibited in certain public places.**

~~It shall be unlawful to hang, post, place, paste, put or in any written, printed, or painted matter other manner affix any handbill on public infrastructure with City rights of any kind, ways or other form of reproduction thereof, containing a message or information of any kind whatsoever intended to be attached to any outdoor billboard, bridge, fence, pole, post, sidewalk, tree, or to or upon the exterior of any other structure, except that the terms of this definition shall City-owned property, including but not apply to nor include any such sign~~

~~mounted or fastened to or suspended from the outside of any building or other structure, in accordance with and authorized by any provisions of an ordinance or statute, either for public convenience or use, or regulating the construction or use, of so-called outdoor display signs, whether such display signs are illuminated or not.~~

~~Private premises means and includes any dwelling, house, building, or other structure designed or used, either wholly or in part, for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, steps, vestibule, or mail box belonging or appurtenant to such dwelling, house, building or other structure.~~

~~Public place means and includes any and all streets, boulevards, avenues, lanes, alleys, or other public ways, and any and all other parks, squares, spaces, plazas grounds and buildings.~~

~~limited to~~ Sec. 3-18. Posters prohibited.

~~No person shall post, stick, stamp, paint, or otherwise fix or attach, or cause the same to be done by any person, any poster to or upon any sidewalk, crosswalk, curb, or any other portion or part of any public place, lamp post, electric light, telegraph pole, telephone or trolley line pole, railway structure, shade tree, or tree box, or upon the piers, columns, trestles, girders, railing, gates or other parts of any public bridge or viaduct, or other public structure or building, or upon any pole, box or fixture connected with the poles, trees, bridges, fire or police alarm system, or upon any fire hydrant, or hydrants, water tower, towers, etc., except such as may be authorized or required by the laws of the United States, the state, or the ordinances of the city.~~

~~Sec. 3-19. Distributing City. This section shall not be construed as prohibiting persons from distributing handbills in~~ on public places.

~~It shall be unlawful for any person property directly to distribute any handbill in any public place, provided, however, that it shall not be unlawful for any person to distribute, without charge to the receiver thereof, any handbill in any public place to any person persons willing to accept such a handbill. them.~~

~~Sec. 3-20. 4.~~ Distribution in or upon vehicles.

~~It shall be unlawful for any person to distribute any handbill in or upon any motor vehicle. The provisions of this section shall not be deemed to prohibit the handling, transmitting or distributing distribution of any handbill to the owner or other occupant of any motor vehicle who is willing to accept the same.~~

~~Sec. 3-21. 5.~~ Distribution on vacant private premises.

~~It shall be unlawful for any person to distribute any handbill in or upon any vacant private premises which are temporarily or continuously vacant.~~

~~Sec. 3-22. 6.~~ Distribution on posted private property.

~~It shall be unlawful for any person to distribute any handbill upon any premises if there is posted on the premises in a conspicuous location a sign bearing the words, "No Trespassing," "No Peddlers or Agents," "No Advertisements," or any similar notice indicating in any manner that the occupants or owners of the premises do not desire to be molested or to have their right of privacy disturbed, or to have any such handbills left upon such the premises.~~

~~Sec. 3-23. Distribution 7. Method of distribution on inhabited private premises.~~

~~No person (1) It shall be unlawful to distribute any handbill in or upon any private premises which are inhabited, except by:~~

- ~~(a) handing or transmitting any such the handbill directly to the owner, occupant, or any other person then present in or upon such private premises; provided, however, that in the case of inhabited private premises which are not posted as provided in this article, a person,~~



~~unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited private premises if such handbill is so placed or deposited as to prevent such handbill from being blown or scattered to other premises. or~~

~~Sec. 3-24. Name and addresses of person responsible for handbills.~~

~~(a)(b) placing or depositing any such handbill in or upon such private in such a manner as to prevent the handbill from being blown or scattered to other premises.~~

~~(2) If a receptacle for handbills is furnished (e.g., in a slot underneath the U.S. postal mailbox), it shall be unlawful to deposit handbills in any location on the premises other than such receptacle.~~

~~(3) Any person distributing handbills from house to house must follow the walks and driveways on the premises and shall not cut across the yard to reach the entrance to the house.~~

~~(4) It shall be unlawful for any person to distribute any handbill which does not have printed thereon the name and address of the following:~~

~~(1) The person who printed, wrote, compiled or manufactured the same;~~

~~(2) The person who caused the same to be distributed, provided, that in the case of a fictitious person or club, in addition to such fictitious name, the true names and addresses of the owners, managers, or agents of the person sponsoring the handbills shall also appear thereon.~~

~~(b) This section shall not apply to handbills, the origin of which are protected by the first amendment of the U.S. Constitution.~~

~~Sec. 3-25. Registering distributors.~~

~~It shall be unlawful for any person to distribute handbills without first having registered upon blanks prepared for that purpose with the city clerk, giving his name, address, and a copy of the handbill which he proposes to distribute.~~

~~Sec. 3-26. Hours of distribution limited.~~

~~It shall be unlawful for any person to distribute any handbill on private premises on Sunday and between the hours of 8:00 p.m. of any weekday and 8:00 a.m. of the following day.~~

~~Sec. 3-27. Exemptions.~~

~~The provisions of this article shall not be deemed to apply to regular messenger service, to the distribution of the United States mail, newspapers and telegrams.~~

~~Sec. 3-28. Prohibiting use of premises for posting objectionable matter.~~

~~It shall be unlawful for the owner, lessee, occupant, or agent of any premises to permit any person to fix, or otherwise attach to any building, structure, or fixture located on such premises, whether such fixture be natural or artificial, any poster or handbill containing any matter prohibited by the terms of this article.~~

~~Sec. 3-29. Penalty.~~

~~(a) Unless a section in this chapter specifically provides otherwise, a first violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than fifty dollars (\$50.00).~~

~~(b) Unless a section in this chapter specifically provides otherwise, a second violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than one hundred and fifty dollars (\$150.00).~~

~~(c) Unless a section in this chapter specifically provides otherwise, a third violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than three hundred dollars (\$300.00).~~

- ~~(d) In addition to a fine, a person determined to be responsible for a municipal civil infraction under this chapter shall be assessed the cost of prosecution of not less than nine dollars (\$9.00) but not to exceed five hundred dollars (\$500.00).~~
- ~~(e) The fourth and any subsequent violation of any provision of this chapter, by any person, is a misdemeanor which shall, upon conviction, be punishable in accordance with section 1-13 of this Code.~~
- ~~(f) In addition to the penalties provided by this section, the district court shall have equitable jurisdiction to enforce any judgment, writ, or order necessary to enforce any provision, the violation of which is a municipal civil infraction, including, but not limited to, abatement of the violating condition or the granting of any injunctive relief.~~

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS:

NAYS:

ABSTAIN:

ABSENT:

### CERTIFICATION

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

The proposed amendments to Chapter 4 of the City Code would:

1. Repeal all existing provisions of Chapter 4, which specify criminal offenses relating to alcohol. For example, this Chapter 4 currently contains prohibitions on selling alcohol to minors, falsifying one's age to obtain alcohol, purchasing alcohol as a minor, etc. These provisions are either outdated or are duplicative of state statutes, which can be used to prosecute alcohol violations in the City.
2. Replace the provisions referenced above with a new chapter focusing on liquor licensing. The details of these new provisions are described in the paragraphs below and are based on recommendations from the Michigan Institute of Continuing Legal Education, which publishes a widely used treatise on municipal law.
3. Specify particular situations in which business owners would be required to apply to the City Council in connection with a liquor license. City Council approval would be required "for a new license [for on-premises consumption], or the transfer of a license, and any applicant seeking to relocate an existing license premises or expand the physical structure of an existing licensed premises by more than 500 square feet or ten percent."
4. Provide that micro brewers, brewpubs, and winemakers with on-premises consumption require City Council approval. These are all fairly new types of available licenses.
5. Specify the materials required to be submitted with the liquor license application and provide specific criteria for the review and approval of applications. The current ordinance does not provide any detail as to how the City Council is supposed to review liquor license applications, which could make the denial of any request difficult to defend in court if challenged.
6. Provide that the City has the authority, but is not required to, conduct annual reviews of liquor license locations. Annual reviews and other enforcement actions pertaining to the ordinance would be undertaken by the police chief or his designee.
7. Provide comprehensive criteria for the revocation or suspension of liquor licenses.

**CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CHAPTER 4 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES TO PROVIDE A PROCESS AND LEGAL  
STANDARDS LIQUOR LICENSING AND TO ELIMINATE CRIMINAL  
REGULATIONS THAT ARE DUPLICATIVE OF STATE STATUTES**

The City of Allegan ordains:

Section 1. Amendment. Chapter 4 of the City of Allegan, Code of Ordinances, entitled “Alcoholic Liquors,” is hereby amended to read in its entirety as follows:

**Article I  
Liquor Licensing**

**Sec. 4-1. Short title.**

This article shall be known as the “Liquor licensing ordinance.”

**Sec. 4-2. Statement of purpose.**

This article is intended to allow the city to establish and administer a policy for issuance and transfer of liquor licenses, to determine when denial, nonrenewal or revocation are appropriate, and to provide for the enforcement of liquor law.

**Sec. 4-3. Licensing policy.**

No person or entity that operates an establishment in the city may sell alcoholic liquor for on-premises consumption (including micro brewers, brewpubs, and wine makers) without the city council's express approval. The city council shall have sole discretion when considering liquor license applications, which shall be required for new licenses, transfer of ownership of existing licenses, transfers of licenses into the city, relocation of an existing licensed establishment, or expansion of an existing licensed establishment by more than 500 square feet or ten percent.

**Sec. 4-4. Application.**

Prior to or simultaneously with the submission of any corresponding application to the state liquor control commission, each applicant for a new license or the transfer of a license, and any applicant seeking to relocate an existing license premises or expand the physical structure of an existing licensed premises by more than 500 square feet or ten percent shall submit a written application to the city clerk, which application shall include the following information:

- (a) The name, age, Social Security number, address and driver's license number of the applicant in the case of an individual. In the case of a partnership, the persons entitled to share in the profits thereof. In the case of a corporation or limited liability company, the purposes for which the entity is organized, the names and addresses of the officers and directors, and if a majority interest in the stock of such corporation is owned by one person or his or her nominee, the name and address of such person and a list of the names of the shareholders;
- (b) The citizenship of the applicant, the applicant's place of birth, and if a naturalized citizen, the time and place of the applicant's naturalization;

- (c) The character of business of the applicant, and in the case of a corporation, the purpose for which it is formed;
- (d) The length of time the applicant has been in business of that character or, in the case of a corporation, the date when it was incorporated;
- (e) The location and description of the premises or place of business which is to be operated under such license;
- (f) A statement whether the applicant has made application for a similar or other license on premises other than described in this application, and the disposition of such application;
- (g) A statement that applicant, its partners, members, officers and directors have never been convicted of a felony;
- (h) A statement that the applicant has met all of the qualifications necessary to obtain a license as set forth in this chapter and state laws, rules and regulations;
- (i) The application shall be accompanied by building and plat plans showing the entire structure and premises and, in particular, the specific areas where the license is to be utilized. The plan shall demonstrate adequate off-street parking, lighting, refuse disposal, screening and noise control;
- (j) The proposed hours and days of the week the premises will be open to the public;
- (k) Whether food will be available to the patrons for purchase. If so, the type of food and proposed hours available to the public;
- (l) Whether entertainment will be provided. If so, the type of entertainment and proposed hours;
- (m) A statement as to whether the applicant has ever been denied an application for a liquor license by the state liquor control commission. If so, the reason for the denial.
- (n) A statement as to whether the applicant has ever been the holder of a liquor license which has been revoked or not renewed. If so, the reason for the revocation or nonrenewal.

#### **Sec. 4-5. Review procedures.**

- (a) *New license unavailable.* The city shall not be obligated to take any action on an application for a new liquor license when there is no such license available pursuant to state law or the terms of this article. The city may, at its discretion, retain the application on file to consider it in the event that a new liquor license becomes available in the future.
- (b) *City departmental review.* Upon receiving an application for an available new license, for the transfer of a license, or for the relocation or alteration of the size of the physical structure of existing licensed premises, the clerk will refer the application to the police chief, fire chief, public works director, and city treasurer, who shall review and investigate the application. The investigation shall include, but not be limited to, reviewing the complete history of the applicant's past business experience and liquor law violations, and also inspecting the proposed premises. The applicant shall provide all requested information to, and fully cooperate with, all city departments requesting any and all additional information. The findings resulting from such review and investigation shall be reported to the city council.
- (c) *Public hearing/review.*
  - (1) *Hearing required.* The city council shall hold a public hearing upon all applications for an available new license, for the transfer of a license, or for the relocation or alteration of the size of the physical structure of existing licensed premises.

- (2) *Notice and appearance.* The applicant shall be given notice of the hearing and the city council may, at its discretion, require the applicant to appear at the hearing and make a written and/or oral presentation concerning the request.
- (3) *Grounds for denial.* An application for an available new license, for the transfer of a license, or for the relocation or alteration of the size of the physical structure of existing licensed premises, may be denied if:
- (A) The applicant was the holder of a liquor license, in the state, which has been revoked or not renewed, by reason of applicant's prior violations;
  - (B) The applicant has been convicted of a violation of any federal or state law or city ordinance concerning the manufacturing, possession or sale of alcoholic liquor or controlled substances;
  - (C) The applicant does not own the premises for which such a license is sought or does not have a lease thereof for a full period for which the license is issued, or if the applicant does not have the financial assets to carry on or maintain the business;
  - (D) The applicant is prohibited from holding a liquor license under the Michigan liquor control code;
  - (E) There exists a violation of the applicable building, electrical, mechanical, plumbing or fire codes, applicable zoning regulations, or applicable public health regulations, or any other applicable city ordinance, county regulation, state or federal law or regulation;
  - (F) It is determined by a majority of the city council that the premises do not or will not, reasonably soon after commencement of operations, have adequate off-street parking, lighting, refuse disposal facilities, screening, noise or nuisance control, or where a nuisance does or will exist;
  - (G) The city council determines and finds that the proposed location is unreasonably detrimental and injurious to the surrounding properties and persons, and/or does not have appropriate provision for: traffic safety, accessibility to the site from abutting roads, capability of abutting roads to accommodate the commercial activity, distance from inconsistent neighboring zoning districts, capacity to control and monitor noise and amplified music, accessibility from primary roads or state highways and distance from public or private schools;
  - (H) The applicant is a partnership and there would be grounds for denying a license to any partner if he or she applied for a license as an individual;
  - (I) The applicant is a corporation or limited liability company, and there would be grounds for denying a license to any officer, manager, effective manager, or director thereof, or stockowner or stockholders owning an aggregate of more than five percent of the stock of such corporation, if such person applied for a license as an individual;
  - (J) The applicant's place of business is conducted by a manager or agent and there would be grounds for denying a license to such manager or agent if he or she applied for a license as an individual; and
  - (K) The city council determines for any other reason that granting the application would adversely impact the public health, safety or welfare.
- (4) *Competing applications.* Where there are competing applications for an available liquor license, the city council shall use criteria including, but not limited to, the following in determining which application, if any, should be granted:

- (A) Zoning of the parcel and adjacent parcels;
  - (B) Availability of utilities;
  - (C) Proposed utilities to be conducted with the license;
  - (D) Traffic on adjacent streets and the existence of any traffic hazards in the area or produced by the applicant's proposed use;
  - (E) Economic backing of applicant sufficient to conduct the proposed use;
  - (F) Design and layout of improvements of the proposed use;
  - (G) Effect upon existing adjacent uses and uses in the vicinity;
  - (H) Location of other licensed establishments as relates to potential traffic effects or hazards; and
  - (I) Any information contained in the application or requirements of this chapter.
- (d) *Approval by resolution.* The approval of liquor-related applications shall be by resolution.

**Sec. 4-6. Enforcement; annual license review.**

- (a) The police chief shall be responsible for the administration and enforcement of this chapter and the Michigan liquor control code. No other City official may investigate or enforce the provisions of this chapter or the liquor control code unless authorized by the police chief.
- (b) The city council may undertake an annual review of any license for the purpose of making a recommendation to the state liquor control commission regarding license renewal. The city council shall consider whether a licensed establishment has been operated in a manner consistent with the provisions of this article and all other applicable laws and regulations.
- (c) Each year, the police chief may cause an investigation to be made regarding each existing on-premises licensed establishment. The investigation may include, but shall not be limited to, the following:
  - (1) An inspection of the premises to determine whether the licensee is in compliance with all applicable city and state codes.
  - (2) An inspection of the premises to determine whether the licensee is in compliance with the license itself, its approved site plan and plan of operation, as well as any conditions imposed by the city or state liquor control commission or representations made by the licensee at the time of issuance or transfer of the license.
  - (3) An inspection to determine the general condition of the premises, both interior and exterior.
  - (4) An inspection of city records to determine whether all taxes and other monies due the city are timely paid.
  - (5) An inspection of police files or other sources of information to determine total calls for service and whether any activity in connection with the licensed premises is in violation of the law, disturbs the public peace and tranquility, constitutes a nuisance, or contributes to the disruption of the normal activities of those in the neighborhood of the licensed premises.
  - (6) A review of the operation of the licensed establishment to determine whether the business is being operated in compliance with any and all representations made by the licensee to the city.

**Sec. 4-7. Revocation and nonrenewal.**

- (a) *Authority to make request.* Each establishment within the city for which a liquor license is granted shall be operated and maintained in accordance with all applicable laws and regulations. Upon any violation of this article, including the criteria in section 4-8, the city council may, after notice and hearing, request that the state liquor control commission revoke a liquor license.
- (b) *Notice.* Before filing an objection to renewal or request for revocation of a license with the state liquor control commission, the city shall serve the licensee by certified mail, mailed not less than ten days prior to the hearing, which notice shall contain the following:
  - (1) Notice of the proposed action;
  - (2) Reasons for the proposed action;
  - (3) Date, time and place of the hearing; and
  - (4) A statement that the licensee may present evidence and testimony and confront adverse witnesses.
- (c) *Written statement.* Upon completion of the hearing, the city council shall submit to the licensee and the state liquor control commission a written statement of its findings and determination.

**Sec. 4-8. Criteria for nonrenewal, suspension or revocation.**

The city council may recommend nonrenewal, suspension or revocation of a license or permit to the state liquor control commission upon a determination based upon a preponderance of the evidence presented at the hearing that any of the following exists:

- (a) Existence of any of the grounds for denial set forth in section 4-5;
- (b) Fraudulent information provided on the original application or the application for renewal;
- (c) The consumption of spirits, if licensed to sell only beer or wine, or both beer and wine;
- (d) Any disorderly conduct or action which disturbs the peace and good order of the neighborhood;
- (e) Any incidents of prostitution, solicitation for prostitution, or larceny;
- (f) Any gambling activity or the placing or using of any gambling apparatus or paraphernalia therein;
- (g) Any unlawful possession, sale or use of any controlled substance;
- (h) Any violation of any other provision of the city code, or any violation of applicable laws, rules, regulations, order or directives of any governmental entity or agency;
- (i) Any violation of the state liquor control act or any rule or regulation promulgated by the state liquor control commission;
- (j) Nonpayment of any federal, state or local tax or special assessment;
- (k) Nonpayment of bills outstanding and owing to the city;
- (l) Any failure by the licensee, or the licensee's agents or employees, to fully cooperate with any federal, state, county or city official; or
- (m) Any failure by the licensee, or the licensee's agents or employees, to fully cooperate with the sheriff, or any deputy sheriff, police officer or state police.

**Sec. 4-9. Termination of escrowed licenses.**

The city council may, by resolution, request that the state liquor control commission terminate an on-premises license that has been placed in escrow for more than one year after its expiration.

**Sec. 4-10. Fees.**



Each applicant for a new license or permit, for transfer of an existing license or permit, for expansion of an existing establishment, and for renewal of an existing license or permit shall pay a nonrefundable application investigation fee in an amount set by resolution of the city council.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

### **CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

The proposed amendments to Chapter 5 of the City Code would:

1. Simplify the “purpose” section to indicate that the purpose of the chapter is to facilitate and coordinate the review and approval of special events in the City.
2. Define “special event” to mean a preplanned event of 1 or more days either: (1) held on City property; or (2) held on private property where the event will draw more than 500 people or where City services (e.g., traffic control, police presence, etc.) will be required. The term “special event” replaces the fairly vague term “entertainment,” as used in the existing ordinance.
3. Generally require the sponsor of a special event to obtain a permit from the City Manager. This is a change from the current ordinance, under which the approval process went through the City Council. However, under the current ordinance, no permit is needed for events with less than 5,000 people in attendance. In other words, the new proposed ordinance would require a broader range of events to obtain a permit, but would make the process for obtaining a permit more streamlined.
4. Establish exceptions to the permitting requirement for:
  - Events hosted by the city or public schools;
  - Events located at the Allegan County Fairgrounds;
  - Gatherings within the picnic areas of a City park; and
  - Sporting events within a sport-specific facility in a City park.
5. Establish specific criteria for the approval of permit applications, based on best practices from other communities. The criteria are intended to mitigate adverse impacts on the public or overcommitment of City resources.
6. Require applicants to indemnify the City for losses incurred by the City as a result of the event, unless such losses are attributable to the City’s sole negligence.
7. Repeal the City’s tattoo licensing ordinance, which is duplicative of a state licensing scheme.

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CHAPTER 5 OF THE CITY OF ALLEGAN, CODE OF ORDINANCES, ENTITLED “AMUSEMENTS AND ENTERTAINMENTS,” TO PROVIDE AN APPROVAL PROCESS FOR SPECIAL EVENTS AND TO ELIMINATE TATOO PARLOR LICENSING REQUIREMENTS THAT ARE DUPLICATIVE OF STATE LAW**

The City of Allegan ordains:

Section 1. Amendment. Chapter 5 of the City of Allegan, Code of Ordinances is hereby amended to read in its entirety as follows:

**Sec. 5-1. Purpose and intent.**

The purpose of this chapter is to facilitate and coordinate the review and approval of special events within the City, thereby allowing the City to work with organizers of proposed events to reduce adverse impacts such as noise, traffic, and parking problems, while guaranteeing the public’s rights to free speech and assembly.

**Sec. 5-2. Special event defined.**

For purposes of this chapter, “special event” means:

- (a) A preplanned, single gathering or event or series of related, consecutive daily gatherings or events of an entertainment, cultural, recreational, political, or sporting nature, to be held in whole or in part on City property; or
- (b) A preplanned, single gathering or event or series of related, consecutive daily gatherings or events of an entertainment, cultural, recreational, political, or sporting nature to be held wholly on non-City property, where:
  - (1) The event is expected to draw 500 or more people as participants, attendees or spectators; or
  - (2) The person promoting or sponsoring the event requests or requires one or more City services, including public safety equipment, event sanitation, law enforcement presence, or traffic management.

Special events may include festivals, fundraisers, parades, runs, walks, relays, marathons, and other similar events.

**Sec. 5-3. Permit required.**

- (a) Except as provided in subsection (b) below, any person desiring to hold, sponsor or promote a special event shall apply for and obtain a special event permit from the City Manager.
- (b) Special event permits are not required for the following:
  - (1) An event put on, conducted, or otherwise under the supervision of the City or the public schools;
  - (2) An event located entirely on the premises of the Allegan County Fairgrounds;
  - (3) A gathering located in an area in a City that is reservable under applicable park policies (although such gathering may be subject to other regulations pursuant to such policies).

- (4) A sporting event located in a sport-specific facility (*i.e.*, baseball and soccer field, basketball court, etc.) in a City park (although such gathering may be subject to other regulations pursuant to City park policies).

#### **Sec. 5-4. Application.**

Applicants for a permit under this chapter must file with the City Clerk an application in writing on a form furnished by the City Clerk, which shall, at a minimum, include the following information, and shall be accompanied by payment of the applicable fee:

- (a) The name and permanent address of the applicant, as well as the local address of the applicant, and phone numbers at which the applicant can be contacted during regular business hours;
- (b) If the applicant is an agent, employee or officer of another person for whom the application is made, the applicant shall give the same information for the principal as in subsection (a) of this section, and the principal shall also designate a registered agent within the state upon whom process and all notices may be served, with the name, address and telephone number thereof, indicating the relation between applicant and principal;
- (c) The same information shall be provided for all the sponsor(s), promoter(s), manager(s) and performer(s) of the special events.
- (d) The place where the special event is to be held;
- (e) The number of persons who will participate in, be spectators for or otherwise attend the special event, including the peak numbers anticipated to be at the special event at any one (1) time;
- (f) The number, location and layout of the available parking (exclusive of public parking) to service the special event.
- (g) The date of the proposed special event and a brief description of the event;
- (h) Any proposed precautions to be taken, police protection or fire protection to be furnished or needed. This must be a detailed appraisal of all needs to minimize the impact of the special event upon the City.
- (i) The public purpose, if any, to be advanced by or as a result of the special event.
- (j) An agreement to pay any costs incurred by the City as a result of the special event unless such cost recovery (or portion thereof) is waived in writing by the City Manager.
- (k) Such other information as may, from time to time, reasonably be requested by action of the City.

#### **Sec. 5-5. Approval of Application.**

The City Manager shall issue a special event permit as provided for in this chapter when, from a consideration of the special event permit application and such other information as may otherwise be obtained, the City Manager finds that:

- (a) The application allows for ample opportunity to properly plan and prepare for the special event;
- (b) Police, fire, other City services or the City's residents will not be unduly burdened or adversely affected by the conduct of the special event;
- (c) The conduct of the special event is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or to create a disturbance;
- (d) The conduct of the special event will meet the requirements of the City for the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location;
- (e) The conduct of the special event will not require the diversion of so great a number of City police

officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the City;

- (f) The concentration of persons, animals or vehicles at the special event will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such special event areas;
- (g) Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas;
- (h) The organizer has secured police, fire and medical protection based on the standards in this chapter and as required by the City;
- (i) No event is scheduled elsewhere in the City where the police, fire or medical resources required for that event are so great that the deployment of public safety services for the proposed event would have an immediate and adverse effect upon the welfare and safety of persons and property; and
- (j) The City Manager is aware of no other information that would prevent it from making a fair determination that a permit should be issued.

The City Manager may impose conditions on the issuance of a special event permit when needed to protect the public health, safety, or welfare.

**Sec. 5-6. Fee.**

The fee for a permit under this chapter shall be set from time to time by resolution of the City Council. However, in addition to any such fee, which shall be paid in full prior to consideration of the application, the applicant shall pay all costs actually, reasonably incurred by the City as a result of the special event, including any costs of personnel, equipment, administration, outsourcing or other costs. The City Manager may waive the fee or collection of costs for a special event sponsored by a nonprofit organization in the City that is judged to be a community-wide event or which result in the contribution of funds to a project or use from which the general public will directly benefit.

**Sec. 5-7. Bond, surety, and indemnification.**

- (a) Unless waived by the City Manager, a bond or other surety shall be required to secure payment of any claim or damage arising out of the special event to reimburse the City for actual, reasonable expenses incurred in protecting the health, safety and welfare of the public or persons attending the special event.
- (b) Such bond and/or other surety may be in cash and in an amount to reasonably secure the City, the public and private owners as well as the county and state, if their help is necessary, from any damage or personal injuries or liability and any added costs rendered necessary by the special event, or by a bond with sureties satisfactory to the City, and personal liability and property damage policies may be required if necessary to protect the aforesaid persons.
- (c) As a condition of the issuance of a special event permit, the event sponsor must agree to defend, indemnify and save harmless the City, its appointed and elected officers and employees from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected officials or employees for damages because of personal or bodily injury, including death at any time therefrom, sustained by any person or persons and on account of damage to property or loss therefrom, arising out of any activity under or in connection with the special event, except only such injury as shall have been occasioned by the sole negligence of the City, its appointed or elected officers or employees.

**Sec. 5-8. Term; transfer; renewal.**

The permit under this chapter shall set out the length of time it is valid and shall not be assignable or renewable.

**Sec. 5-9. Revocation.**

- (a) Permits issued under the provisions of this chapter may be revoked by the City Manager after notice and hearing before the City Manager for any of the following causes:
- (1) Fraud, misrepresentation or false statement in the application for the permit or during any meeting to consider issuance of the permit;
  - (2) Fraud, misrepresentation or false statement made in the course of carrying out the special event;
  - (3) Any violation of this chapter or any condition of any permit issued pursuant to this chapter;
  - (4) Conviction of any crime or misdemeanor involving moral turpitude;
  - (5) Conducting the special event in an unlawful manner or in such manner as to constitute a breach of peace, or to constitute a menace to the health, safety or general welfare of the public; or
  - (6) The permittee has failed to comply with any of the terms or conditions of this chapter, the special event permit, or any other City ordinance, rule or regulation.
- (b) Notice of the hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permittee at his last known address at least five (5) days prior to the date set for hearing, unless the City Manager determines an emergency requiring a shorter period.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023

CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE CHAPTER 5 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES, ENTITLED "AMUSEMENTS AND  
ENTERTAINMENTS," TO PROVIDE AN APPROVAL PROCESS FOR SPECIAL  
EVENTS AND TO ELIMINATE TATOO PARLOR LICENSING  
REQUIREMENTS THAT ARE DUPLICATIVE OF STATE LAW

The City of Allegan ordains:

Section 1. Amendment. Chapter 5 of the City of Allegan, Code of Ordinances is hereby amended to read in its entirety as follows:

**Sec. 5-1— Purpose and intent.**

~~In considering this chapter 5, the city council is cognizant of the costs incurred by the city to accommodate major entertainment events so as to minimize jeopardy of the public health, safety and welfare. Enormous increases in traffic, noise, dust, demands on medical services, etc., occur with any sizeable crowd and, given the size of the city, a crowd of five thousand (5,000) or more is sizeable. Such events strain the city's public works, police, emergency medical service, fire and administrative staffs, often necessitating significant expenditures for overtime work or auxiliary staffing, and such strains increase with the size of any event, the overall number of events, the frequency of events and the particular time and date of events, particularly as they may overlap conditions like road construction, weather conditions, road or communication breakdowns or other conditions which impair traffic movement, communication, etc. In addressing these matters, the city council seeks to exercise its stewardship of the city's monetary, natural, personnel and other resources.~~

~~The city acknowledges, however, the direct value of some events, particularly community-wide events sponsored by civic, charitable, fraternal or other nonprofit organizations in the city, especially to the extent such events may also help raise funds used to support community programs or otherwise directly benefit the public welfare of city residents. The city council also acknowledges the theoretical, potential benefits to the city business from increased numbers of people and increased activity in the city.~~

~~(Ord. No. 322, § 1, 11-11-96)~~

~~Secs. 5-2—5-15. Reserved.~~

~~ARTICLE II. ENTERTAINMENTS~~

~~DIVISION 1. GENERALLY~~

~~The purpose of this chapter is to facilitate and coordinate the review and approval of special events within the City, thereby allowing the City to work with organizers of proposed events to reduce adverse impacts such as noise, traffic, and parking problems, while guaranteeing the public's rights to free speech and assembly.~~

**Sec. 5-16—Definitions. 5-2. Special event defined.**

~~The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:~~

~~*Entertainment* includes any and every form of entertainment, including fairs, races, concerts, contests of every nature, exhibitions and sporting events.~~

~~*Place* means any place, public or private, in the city.~~

~~(Ord. No. 322, § 1, 11-11-96)~~

For purposes of this chapter, “special event” means:

- (a) A preplanned, single gathering or event or series of related, consecutive daily gatherings or events of an entertainment, cultural, recreational, political, or sporting nature, to be held in whole or in part on City property; or
- (b) A preplanned, single gathering or event or series of related, consecutive daily gatherings or events of an entertainment, cultural, recreational, political, or sporting nature to be held wholly on non-City property, where:
  - (1) The event is expected to draw 500 or more people as participants, attendees or spectators; or
  - (2) The person promoting or sponsoring the event requests or requires one or more City services, including public safety equipment, event sanitation, law enforcement presence, or traffic management.

Special events may include festivals, fundraisers, parades, runs, walks, relays, marathons, and other similar events.

**Sec. 5-17. — Exceptions5-3. Permit required.**

~~This article shall not apply to the following entertainments:~~

- (a) (1) — Entertainment~~Except as provided in subsection (b) below, any person desiring to hold, sponsor or promote a special event shall apply for and obtain a special event permit from the City Manager.~~
- (b) Special event permits are not required for the following:
  - (1) An event ~~put on, conducted, or otherwise under the supervision of the public schools unless it involves contracting with third parties for the performance of the entertainment for profit~~City or the public schools;
  - (2) The county agricultural society's annual county fair during fair week, provided that the county agricultural society shall furnish the city clerk with a schedule of the events for the fair by July 1 of each year.

~~(Ord. No. 322, § 1, 11-11-96)~~

~~Secs. 5-18 — 5-30. — Reserved.~~

**DIVISION 2. — PERMIT**

- (2) An event located entirely on the premises of the Allegan County Fairgrounds;
- (3) A gathering located within a picnic area in a City park (although such gathering may be subject to other regulations pursuant to City park policies).
- (4) A sporting event located in a sport-specific facility (i.e., baseball and soccer field, basketball court, etc.) in a City park (although such gathering may be subject to other regulations pursuant to City park policies).

**Sec. 5-31. — Required.**

~~Before any person shall conduct, sponsor, promote, perform or commence to conduct, manage, sponsor, promote or perform any entertainment for which the number of participants, spectators or other attending over the course of the entertainment is reasonably expected to exceed four thousand nine hundred ninety-nine (4,999) persons, whether for consideration or not, the person shall apply to the city and obtain a permit therefor.~~



~~(Ord. No. 322, § 1, 11-11-96)~~

~~Sec. 5-32.~~ **Application.**

Applicants for a permit under this ~~division~~chapter must, ~~at least sixty (60) days before the scheduled date of the entertainment,~~ file with the ~~city clerk a sworn~~City Clerk an application in writing ~~in duplicate~~ on a form furnished by the ~~city clerk~~City Clerk, which shall, at a minimum, include the following information, and shall be accompanied by payment of the applicable fee:

- (a) ~~(1)~~ — The name and permanent address of the applicant, as well as the local address of the applicant, and phone numbers at which the applicant can be contacted during regular business hours;
- (b) ~~(2)~~ — If the applicant is an agent, employee or officer of another person for whom the application is made, the applicant shall give the same information for the principal as in subsection ~~(4a)~~ of this section, and the principal shall also designate a registered agent within the state upon whom process and all notices may be served, with the name, address and telephone number thereof, indicating the relation between applicant and principal;
- (c) ~~(3)~~ — The same information shall be provided for all the sponsor(s), promoter(s), manager(s) and performer(s) of the ~~entertainment~~special event.
- (d) ~~(4)~~ — The place where the ~~entertainment~~special event is to be held;
- (e) ~~(5)~~ — The number of persons who will participate in, be spectators for or otherwise attend the ~~entertainment~~special event, including the peak numbers anticipated to be at the ~~entertainment~~special event at any one (1) time;
- (f) ~~(6)~~ — The number, location and layout of the available parking (exclusive of public parking) to service the ~~entertainment~~special event.
- (g) ~~(7)~~ — The date of the proposed ~~entertainment~~special event and a brief description of the ~~entertainment~~event;
- (h) ~~(8)~~ — Any proposed precautions to be taken, police protection or fire protection to be furnished or needed. This must be a detailed appraisal of all needs to minimize the impact of the ~~entertainment~~special event upon the ~~city~~City.
- (i) ~~(9)~~ — The public purpose, if any, to be advanced by or as a result of the ~~entertainment~~special event.
- (j) ~~(10)~~ — An agreement to pay any costs incurred by the ~~city~~City as a result of the ~~entertainment~~special event unless such cost recovery (or portion thereof) is waived in writing by ~~resolution of the city council~~City Manager.
- (k) ~~(11)~~ — Such other information as may, from time to time, reasonably be requested by action of the ~~city council~~City.

~~(Ord. No. 322, § 1, 11-11-96)~~

**Sec. 5-5. Approval of Application.**

The City Manager shall issue a special event permit as provided for in this chapter when, from a consideration of the special event permit application and such other information as may otherwise be obtained, the City Manager finds that:

- (a) The application allows for ample opportunity to properly plan and prepare for the special event;

- (b) Police, fire, other City services or the City's residents will not be unduly burdened or adversely affected by the conduct of the special event;
- (c) The conduct of the special event is not reasonably likely to cause injury to persons or property, to provoke disorderly conduct or to create a disturbance;
- (d) The conduct of the special event will meet the requirements of the City for the safe and orderly movement of other pedestrian or vehicular traffic contiguous to its route or location;
- (e) The conduct of the special event will not require the diversion of so great a number of City police officers to properly police the line of movement and the areas contiguous thereto as to prevent normal police protection of the City;
- (f) The concentration of persons, animals or vehicles at the special event will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such special event areas;
- (g) Adequate sanitation and other required health facilities are or will be made available in or adjacent to any public assembly areas;
- (h) The organizer has secured police, fire and medical protection based on the standards in this chapter and as required by the City;
- (i) No event is scheduled elsewhere in the City where the police, fire or medical resources required for that event are so great that the deployment of public safety services for the proposed event would have an immediate and adverse effect upon the welfare and safety of persons and property; and
- (j) The City Manager is aware of no other information that would prevent it from making a fair determination that a permit should be issued.

The City Manager may impose conditions on the issuance of a special event permit when needed to protect the public health, safety, or welfare.

#### **Sec. 33-5-6. Fee.**

The fee for a permit under this ~~division~~chapter shall be set from time to time by resolution of the ~~city council~~City Council. However, in addition to any such fee, which shall be paid in full prior to ~~city council~~ consideration of the application, the applicant shall pay all costs actually, reasonably incurred by the ~~city~~City as a result of the ~~entertainment~~special event, including any costs of personnel, equipment, administration, ~~out-sourcing~~outsourcing or other costs. The ~~city council~~City Manager may waive the fee or collection of costs for ~~those entertainments~~a special event sponsored by a nonprofit organization in the ~~city~~City that ~~are~~is judged ~~by the city council~~ to be a community-wide ~~event~~event or which result in the contribution of funds to a project or use from which the general public will directly benefit.

~~(Ord. No. 322, § 1, 11-11-96)~~

#### **Sec. 5-34-7. Bond and surety, and indemnification.**

- (a) Unless waived by the ~~city council~~City Manager, a bond or other surety shall be required to ~~save the city harmless from secure payment of~~ any claim or damage arising out of the ~~entertainment~~special event to reimburse the ~~city~~City for actual, reasonable expenses incurred in protecting the health, safety and welfare of the public or persons attending the ~~entertainment~~special event.

- (b) Such bond and/or other surety may be in cash and in an amount to reasonably secure the ~~city~~City, the public and private owners as well as the county and state, if their help is necessary, from any damage or personal injuries or liability and any added costs rendered necessary by the ~~entertainment~~special event, or by a bond with sureties satisfactory to the ~~city~~City, and personal liability and property damage policies may be required if necessary to protect the aforesaid persons.

~~(Ord. No. 322, § 1, 11-11-96)~~

- (c) As a condition of the issuance of a special event permit, the event sponsor must agree to defend, indemnify and save harmless the City, its appointed and elected officers and employees from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected officials or employees for damages because of personal or bodily injury, including death at any time therefrom, sustained by any person or persons and on account of damage to property or loss therefrom, arising out of any activity under or in connection with the special event, except only such injury as shall have been occasioned by the sole negligence of the City, its appointed or elected officers or employees.

**Sec. 5-~~35~~-8. Term; transfer; renewal.**

The permit under this ~~division~~chapter shall set out the length of time it is valid and shall not be assignable or renewable.

~~(Ord. No. 322, § 1, 11-11-96)~~

**Sec. 5-9. Revocation.~~36~~—Denial.**

- (a) Permits issued under the provisions of this ~~division~~chapter may be revoked by the ~~city council~~City Manager after notice and hearing before the ~~city~~City Manager for any of the following causes:
- (1) Fraud, misrepresentation or false statement in the application for the permit or during any meeting to consider issuance of the permit;
  - (2) Fraud, misrepresentation or false statement made in the course of carrying out the ~~entertainment~~special event;
  - (3) Any violation of this ~~article~~chapter or any condition of any permit issued pursuant to this chapter;
  - (4) Conviction of any crime or misdemeanor involving moral turpitude; ~~or~~
  - (5) Conducting the ~~entertainment~~special event in an unlawful manner or in such manner as to constitute a breach of peace, or to constitute a menace to the health, safety or general welfare of the public~~—; or~~
  - (6) The permittee has failed to comply with any of the terms or conditions of this chapter, the special event permit, or any other City ordinance, rule or regulation.
- (b) Notice of the hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the permittee at his last known address at least five (5) days prior to the date set for hearing, unless the ~~council~~City Manager determines an emergency requiring a shorter period.

~~(Ord. No. 322, § 1, 11-11-96)~~

~~Sees. 5-37—5-39.—Reserved.~~

### ~~DIVISION 3.—TATTOO AND BODY PIERCING ESTABLISHMENTS<sup>[2]</sup>~~

Footnotes:

~~—(2)—~~

~~**Editor's note**—Ord. No. 331, § 1, adopted July 14, 1997, set out provisions intended for use as § 5-40. For purposes of classification, Section 2. Publication and at the editor's discretion, these provisions have been included as div. 3, §§ 5-40—5-53.~~

~~Sec. 5-40.—Generally.~~

~~Effective Date. The city enacts the following to provide for regulation of tattoo and body piercing establishments and to establish guidelines for the health, maintenance and safety of such establishments.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-41.—Definitions.~~

~~For the purposes of this section, the following definitions City Clerk shall apply:~~

~~*Body piercing, body pierce or pierced* shall mean the practice of piercing the skin, other than the ears, of another individual whether by means of a needle or other device, for the purpose of creating a hole in which rings, studs or other items may be inserted for ornamental purposes.~~

~~*Body piercing establishment* means any place where body piercing is performed for consideration, other than by a licensed medical practitioner or cosmetologist, or any place where body piercing is regularly conducted whether or not it is in exchange for compensation.~~

~~*Certificate of inspection* shall mean the written approval from the city building official that a tattooing or body piercing establishment has been inspected and meets all of the terms of this section relating to physical facilities, equipment and layout.~~

~~*City* shall mean the City of Allegan, Allegan County, Michigan.~~

~~*Manager* shall mean a person who is responsible for the daily operation of a tattoo or body piercing establishment.~~

~~*Operator* shall mean any individual, firm, company, corporation or association that owns or operates an establishment where tattooing or body piercing is performed or any individual who performs or practices tattooing on the person of another.~~

~~*Tattoo, tattooed, tattooing* shall mean any method of placing permanent designs, letters, scrolls, figures, symbols or any other marks upon or under the skin with ink or any other substance, by the aid of needles or any other instruments designed to touch or puncture the skin, resulting in the coloration of the skin.~~

~~*Tattoo establishment* means any place where persons are tattooed for consideration, other than by a licensed medical practitioner or cosmetologist, or any place where tattooing is regularly conducted whether or not it is in exchange for compensation.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-42.—License required.~~

~~No person shall engage or allow an employee or guest to engage in the business of operating a tattoo or body piercing establishment without a valid and current license from the city clerk in accordance with the provisions of this division.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-43. License application and fee—Tattoo or body piercing establishment.~~

- ~~(a) *Requirements for license.* An application to operate shall be made to the city clerk. In those instances in which tattooing and body piercing are both performed on the premises, a single license shall be issued. The application for the license shall be made under oath stating that the information contained in the application is true and accurate and upon a form provided by the city clerk. Any false statement set forth in an application shall be a violation of this section and **cause** for revocation of the license. A non-refundable license fee must be paid. The license shall not be processed until the following has been supplied:~~
- ~~(1) The name, address and telephone number of each applicant and each manager. If the applicant is a corporation, the names and addresses of each of the officers and directors of the corporation. If the applicant is a partnership, the names and addresses of each general partner shall also be given.~~
  - ~~(2) The name, address and telephone number of each person employed and working at the establishment, along with a certificate issued by a licensed medical practitioner providing that the employee was examined by the certifying practitioner and that the employee is free of communicable disease as defined by the Michigan Public Health Code.~~
  - ~~(3) The business histories of the applicant and all individuals identified under subsection (1) above.
    - ~~A. *Length of business histories.* The histories shall encompass the five (5) years prior to the date of application.~~
    - ~~B. *Information in business histories.* The histories shall include whether the applicant or the individuals identified in subsection (1) above, in previously operating in this or another city or state has had a business license denied, revoked or suspended; the reason for the denial, revocation or suspension; and the business activity or occupation subsequent to the denial, revocation or suspension.~~~~
  - ~~(4) The name and address of any other tattoo or body piercing establishment owned or operated by any person identified in subsection (1) above.~~
  - ~~(5) Certification by the city's building official that the physical standards for the establishment set forth in subsection (6) below have been met. Prior to issuing a license, the city clerk shall request that all appropriate city departments, including the fire department review and approve issuance of the license for compliance with all city ordinances.~~
  - ~~(6) The annual license fee for each establishment, the amount of which shall be established by resolution of the city council from time to time.~~
- ~~(b) *Changes in data.* The applicant or holder of a license shall notify the city clerk in writing of any change in the data required to be furnished in this section within ten (10) days after such change occurs.~~
- ~~(c) *Validity of license.* The license granted hereunder shall be for one (1) year beginning July 1 of each year. A license granted is nontransferable.~~
- ~~(d) *Sale of establishment.* Upon the sale or transfer of a tattoo or body piercing establishment, the license shall be void. A new application shall be made by any person desiring to own or operate the establishment.~~
- ~~(e) *Placement of license.* The owner and operator of a tattoo or body piercing establishment shall display the license in a conspicuous place at all times so that it may be readily seen by persons entering the premises.~~
- ~~(f) *Copy of section.* The owner or operator of a tattoo or body piercing establishment shall maintain on the premises a copy of this section for public inspection at all times during regular business hours.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-44. Denial or revocation of licenses.~~

~~(a) *Denial.* An application for a license may be denied by the city clerk if the application is incomplete, if granting the license would result in a violation of another city ordinance, or if there are any false statements set forth in the application.~~

~~*Appeal.* Appeal of the denial of a license by the city clerk shall be made to a committee of three (3) city council members as appointed by the mayor.~~

~~(b) *to be published.* This~~ **Revocation.** ~~Any license granted may be revoked by the city council upon a finding that the licensee committed a violation or knowingly allowed conditions to exist or an employee to engage in any conduct in violation of any provision of this section, any other city ordinance or state statute, or upon a determination that continued operation under an existing license is contrary to the public health, safety or welfare. shall take effect upon publication.~~

~~(c) *Hearing.*~~

~~(1) *Notice.* Before the city council revokes a license issued herein, or upon appeal from the denial of a license by the city clerk, the city clerk shall cause a written notice to be sent by certified mail to:~~

~~A. The licensee or applicant affected, at the address stated in the license or application, informing such person of the right to a hearing on request; and~~

~~B. The owner of the premises according to the latest tax assessment roll where an establishment is or is planned to be located.~~

~~(2) *Failure to request hearing.* If the applicant/licensee does not request a hearing within ten (10) days of the date the notice was sent, the license may be revoked or the city clerk's denial of the application shall be deemed affirmed.~~

~~(3) *Request of hearing.* If the applicant/licensee requests a hearing before the city council in regards to the proposed denial/revocation, the hearing shall be held within twenty-one (21) days after the date of the written request.~~

~~(4) *Procedure.* Both the city and the applicant/licensee shall be afforded an opportunity to present evidence on the issue at the hearing; however, formal evidentiary and procedural rules need not be followed.~~

~~(5) *Upon revocation.* In the event a license is revoked, the licensee or a substantially similar or related licensee shall not be granted a new license for a period of two (2) to three (3) years.~~

~~(6) *Upon suspension.* Upon suspension or revocation of any license or permit, the fee therefore shall not be refunded.~~

~~(7) *Finality.* The action taken by the city council or arising by operation of this section shall be final.~~

(Ord. No. 331, § 1, 7-14-97)

#### Sec. 5-45. Health and sanitary requirements.

In addition to compliance with all applicable federal, state, or county laws, rules, or regulations, each operator and tattooing or body piercing establishment shall comply with the following requirements:

~~(a) *Room specifications.* The room in which tattooing or body piercing is done shall have an area of not less than one hundred (100) square feet. The walls, floors and ceiling shall have an impermeable, smooth and washable surface. A toilet shall be located in the establishment and shall be accessible to the public at all times when the establishment is open for business. The lavatory shall be supplied with hot and cold running water, soap and sanitary towels.~~

~~(b) *Sanitization of room and equipment therein.* All tables, chairs, and other equipment shall be made of nonporous materials which may be readily disinfected, and shall be separated from the view of waiting customers or observers by a panel at least six (6) feet high or by a door. The entire premises and equipment shall be maintained in a clean, sanitary condition and in good repair.~~



- ~~(c) *Cleanliness of personnel.* All personnel shall wash their hands in hot water with soap before giving any service or treatment to a patron. Personnel shall wear sterile, single-use latex gloves while tattooing or body piercing, and those gloves shall be removed and disposed of immediately after use for each separate patron. All personnel shall, at all times, wear clean outer garments.~~
- ~~(d) *Infected patron.* No tattooing or body piercing shall be done on any patron who is infected with any fungus or other skin infection; nor shall service be performed on a patron exhibiting a skin inflammation such as a rash, pimple, or boil, or having any contagious or communicable disease unless a licensed physician has certified that such person may be safely served.~~
- ~~(e) *Restrictions on procedures.* No skin shall be penetrated, abraded or treated with chemicals for the purpose of removing, camouflaging or altering any blemish, birthmark, scar or existing tattoo.~~
- ~~(f) *Sterilization.* Safety razors with a new, single-service blade for each customer or patron, or a straight-edge which is thoroughly cleaned and sterilized before use on each customer or patron, shall be used.~~
- ~~(g) *Area of body.* The area to be tattooed or pierced shall first be thoroughly washed for a period of two (2) minutes with warm water to which has been added an antiseptic liquid soap. A sterile single-use sponge shall be used to scrub the area. After shaving, if any, and before tattooing or body piercing is begun, a solution containing no less than seventy (70) percent alcohol shall be applied to the area with a single-use sponge used and applied with a sterile instrument.~~
- ~~(h) *Petroleum jelly.* Only petroleum jelly in collapsible metal or plastic tubes, or its equivalent, shall be used on the area to be tattooed, and it shall be applied with sterile gauze. The use of styptic pencils, alum blocks or other solid styptic to check the flow of blood is prohibited.~~
- ~~(i) *Illness of patron.* Inquiry shall be made and anyone giving a history of recent jaundice or hepatitis may not be tattooed or pierced within one (1) year of their being cured of such illness.~~
- ~~(j) *Procedures upon completion of tattoo.* For tattooing only, single-service or individual containers of dye or ink shall be used for each patron, and the container therefor shall be discarded immediately after completing work on a patron. Any dye in which the needles were dipped shall not be used on another person.~~
  - ~~(1) Excess dye or ink shall be removed from the skin with a single-use sterile sponge which shall be immediately discarded.~~
  - ~~(2) After completing work on any person, the tattooed area shall be washed with sterile gauze saturated with an antiseptic soap solution, a solution containing no less than seventy (70) percent alcohol, or an equivalent skin cleansing product solution.~~
  - ~~(3) The tattooed area shall be allowed to dry and petroleum jelly from a collapsible or plastic tube shall be applied, using sterile gauze. A sterile gauze dressing shall then be applied to the tattooed area.~~
- ~~(k) *Infections.* All infections resulting from the practice of tattooing or body piercing which become known to the operator shall promptly be reported to the county health department by the operator or other person owning or operating the tattooing or body piercing establishment, and the infected client shall be referred to a physician.~~
- ~~(l) *Bandages and dressings.* All bandages and surgical dressings used shall be sterile.~~
- ~~(m) *Disposal of used objects.* All used safety razors, latex gloves, needles, skin cleansing sponges, gauze dressings and other materials that have come in contact with human blood, other than furniture, floor and wall coverings, and re-usable instruments, shall promptly be disposed of by placing the items in a biohazard container. Biohazard containers shall be disposed of at least weekly by a person or corporation licensed for biohazard waste disposal.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-46. Care of instruments.~~

- ~~(a) *Case or cabinet.* All clean and ready-to-use needles and instruments shall be kept in an enclosed glass, metal or plastic case or cabinet while not in use. Such case or cabinet shall be maintained in a sanitary manner at all times.~~
- ~~(b) *Steam sterilization.* The tattoo or body piercing establishment must have a steam sterilizer (autoclave) for sterilizing all needles and similar instruments before use on any customer, person, or patron. (Alternate sterilizing procedures may be used when specifically approved in writing by the city.) Sterilization of equipment will be accomplished by exposure to live steam for at least thirty (30) minutes at a minimum pressure of 15 (fifteen) pounds per square inch, temperature of two hundred forty (240) degrees Fahrenheit or one hundred sixteen (116) degrees Celsius.~~
- ~~(c) *Sterilization of needles and instruments.* The needles and instruments required to be sterilized shall be used, handled and temporarily placed during tattooing or piercing so that they will not be contaminated.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-47. Records.~~

~~Permanent records for each patron or customer shall be maintained by the licensee or operator of the establishment.~~

- ~~(1) *Patron or customer records.* Before a tattooing or body piercing operation begins, the patron or customer shall be required personally to enter, on a record form provided by such establishments, the date, his or her printed name, address, age, record of and recent history of jaundice or hepatitis, and his or her signature.~~
- ~~(2) *Retention of records.* Records shall be retained by the operator or licensee and made available for examination by the city upon request. In the event of a change of ownership or closing of the business, all such records shall be made available to the city.~~

~~(Ord. No. 331, § 1, 7-14-97)~~

~~Sec. 5-48. Inspections.~~

~~The city may conduct periodic inspections of any tattooing or body piercing establishment for the purpose of determining whether or not the establishment and the persons operating therein are in compliance with all applicable ordinances. It shall be unlawful for any person or operator of a tattooing or body piercing establishment willfully to prevent or restrain the city from entering any licensed establishment where tattooing or body piercing is being performed for the purpose of inspecting said premises, after proper identification is presented to the operator.~~

~~(Ord. No. 331, § 1, 7-14-97)~~



Sec. 5-49. — Minors.

~~All licenses must comply with all other chapters of the Code. Additionally, it shall be unlawful to tattoo or body pierce a minor, who has not been emancipated, without first obtaining the written consent of an adult who has been positively identified as the parent or guardian of the minor.~~

(Ord. No. 331, § 1, 7-14-97) YEAS: \_\_\_\_\_

\_\_\_\_\_  
NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

### CERTIFICATION

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

The proposed amendment would repeal Chapter 7.5 in its entirety. Chapter 7.5 is no longer necessary because the Uniform Video Services Local Franchise Act of 2006 (the “Act”) now governs the process and terms for local cable franchises. Charter Communications is currently the only cable operator with a franchise to operate in the City, and that franchise agreement was issued in 2017 pursuant to the terms of the Act.

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO REPEAL CHAPTER 7.5 OF THE CITY CODE AS NO  
LONGER NECESSARY AFTER THE PASSAGE OF THE UNIFORM VIDEO  
SERVICES LOCAL FRANCHISE ACT**

The City of Allegan ordains:

Section 1. Repealer. Chapter 7.5 of the City of Allegan, Code of Ordinances, entitled "Cable Television," is hereby repealed.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

The proposed amendments to Chapter 7 of the City Code would:

1. Rename the chapter “Buildings and Property Maintenance” and consolidate the most frequently used property maintenance provisions (e.g., the IPMC, the blight ordinance, and the long grass ordinance) into a single chapter.
2. Eliminate enforcement/penalty provisions that are redundant of those found in Chapter 1.
3. Simplify the language required to assume responsibility for enforcing the Michigan Construction Code within the City. Current provisions addressing each individual component code (electrical, plumbing, etc.) are unnecessary.
4. Make minor modifications to the adoption of the International Property Maintenance Code (IPMC) to align with current practices.
5. Make minor modifications to the blight ordinance by adding commonly used provisions from the IPMC. This will give code enforcement officers the ability to cite the blight ordinance for most violations. Citing the IPMC is more cumbersome, but the IPMC is still useful for some purposes (e.g., rental inspections).
6. Add subsection captions to the rental inspection ordinance for consistency of formatting.
7. Eliminate regulations regarding building demolition, which is regulated under the Michigan Construction Code.

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CHAPTER 7 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES TO CONSOLIDATE AND PROVIDE UPDATED  
REGULATIONS PERTAINING TO BUILDINGS AND PROPERTY  
MAINTENANCE**

The City of Allegan ordains:

Section 1. Amendment. Chapter 7 of the City of Allegan, Code of Ordinances is hereby renamed “Buildings and Property Maintenance” and amended to read in its entirety as follows:

**Article I**  
**Construction Code**

**Sec. 7-1. Administration and enforcement of Michigan Construction Code.**

The city has assumed responsibility for the administration and enforcement of the Michigan Construction Code, including the building, electrical, plumbing and mechanical codes, throughout its corporate limits. The city’s building official is principally charged with the administration and enforcement of the codes. Any fees provided for in the codes shall be as prescribed by resolution of the city council.

**Article II**  
**Rental Registration**

**Sec. 7-5. Registration of the operation of rental units, rental dwellings, multiple dwellings and rooming houses.**

- (a) *Definitions.* These words and phrases shall have the following meanings when used in this article:
- (1) *Building official* shall mean the city’s building official and his or her designees.
  - (2) *Dwelling* shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided that temporary housing shall not be regarded as a dwelling.
  - (2) *Dwelling unit* shall mean one (1) room or suite of two (2) or more rooms providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.
  - (3) *Rental unit* shall mean any dwelling or dwelling unit, multiple dwelling or rooming house occupied by a person or persons who is/are not the owner(s) of the property in which the dwelling or dwelling unit is located.
- (b) *Registration required.* No person shall operate a rental unit unless he holds a current registration issued by the building official in his name for the specifically named dwelling, multiple dwelling or rooming houses.
- (c) *Required inspection.* No rental unit may be registered or re-registered unless it is first inspected by the building official or designee. If the rental unit does not comply with all applicable federal, state, and local requirements, including the city’s blight ordinance and other applicable property maintenance regulations, the building official or designee may refuse to register or re-register the

rental unit, or may register or re-register the rental unit subject to certain specified conditions which shall be met in order for the registration or re-registration to remain valid.

- (d) *Registration validity.* Except as set forth in subsections (l), every registration shall be issued for a period of three (3) years unless sooner revoked, and may be renewed for successive periods of three (3) years. Registrations shall be issued for those units and dwellings which conform to all federal, state, and local requirements, including the city's blight ordinance and other applicable property maintenance regulations.
- (e) *Building official.* The building official is hereby authorized, upon application therefore, to issue new operating registrations, and renewals thereof, in the names of applicant owners or operators of rental dwellings, multiple dwellings and rooming houses. No such registrations shall be issued unless such premises for which the registration is sought, is found, after inspection, to meet all requirements of this article and applicable rules and regulations pursuant thereto.
- (f) *Application.* No registration shall be issued or renewed unless the applicant owner or operator has first made application therefore on an application form provided by the building official. The building official shall develop such forms and make them available to the public.
- (g) *Consent to inspections.* No registration shall be issued or renewed unless the applicant owner or operator agrees in his application to such inspections as the building official may require to determine whether the premises is in compliance with the provisions of this article and with applicable rules and regulations pursuant thereto.
- (h) *Registration and inspection fee.* No registration shall be issued or renewed unless the completed application form is accompanied by the payment of a registration and inspection fee as prescribed in the officially adopted resolutions of this city.
- (i) *Required information.* No registration shall be provided or renewed unless the owner annually provides the building official with the current occupant name, indicating dwelling unit address, phone number, as well as the owner's name, address and telephone number. The owner may designate in writing to the building official the name of an agent for the receipt of services of notice that there is a violation of the provisions of this article and for service of process pursuant to this article. Whenever the name, address, or telephone number of the occupant, owner, or his agent changes such information shall be provided to the building official immediately.
- (j) *Renewals.* All applications for a registration renewal must be submitted to the building official, or his designee, thirty (30) days prior to the date on which the registration expires. The city manager may extend the deadline for submission of the registration application.
- (k) *Late filing fee.* For any rental dwelling for which a timely application has not been filed, a late filing fee per unit shall be charged. No registration shall be issued until all filing fees have been paid. Prior to charging a late fee, the last known owner of record shall be notified in writing at his last known address of the need for a registration application, and given forty-eight (48) hours to provide the city with the information necessary for registration.
- (l) *Conducting of inspection.* Following the receipt of an application for registration, or renewal thereof, accompanied by the filing fee, if applicable, the building official or his authorized agent shall make an initial interior and exterior inspection. Upon initial inspection, if the building official finds that the dwelling in question meets all requirements of this article and all other applicable ordinances of the city and there are no outstanding violation notices concerning the dwelling, the building official shall direct that the registration or registration renewal issued for such dwelling be for a period of three (3) years. If the building inspector upon initial inspection finds that the interior or exterior of the unit in question does not meet all the requirements of this article and all other applicable ordinances of the city, the owner, agent, or landlord, of the rental dwelling shall be

notified in writing of the nature of the violations and the date by which the violations must be corrected. Upon finding that each unit and the interior and exterior of the dwelling meets all the requirements of this article and all other applicable ordinances of the city, the building official shall issue a registration for each dwelling.

- (m) *Transfer*. If ownership of the dwelling is transferred during the time that the registration is valid, the registration shall transfer to the new owner upon receipt by the building official of the name, address and telephone number of the new owner. A registration that has been transferred shall expire or be renewed at the same time as if it had not been transferred.
- (n) *Period for registration of rental units*. Rental units required to be registered pursuant to this article shall comply with the following requirements, to the extent applicable:
  - (1) Each newly constructed or newly converted rental unit shall be registered within thirty (30) days after the city issues a certificate of occupancy or an occupancy permit.
  - (2) Each rental unit which is sold, transferred or otherwise conveyed in whole or in part shall be re-registered within thirty (30) days after the date of the deed, land contract or other instrument of conveyance.
  - (3) Each newly converted rental unit which is so converted without the issuance of a certificate of occupancy or an occupancy permit shall be registered within thirty (30) days after the date the rental unit is first occupied for rental purposes.
  - (4) Each rental unit shall be scheduled for inspection and re-registered within thirty (30) days after the expiration of its then current registration.
- (o) *Supplemental inspection*. In addition to the inspection required in subsection (d) above when a rental unit is registered or re-registered, the building official or designee may also inspect a rental unit upon the occurrence of any of the following events:
  - (1) Upon receipt of a complaint from an owner or an occupant of the rental unit that it is in violation of this article;
  - (2) Upon receipt of a complaint from any law enforcement department or other public agency or any other individual having personal knowledge that the rental unit is in violation of this article;
  - (3) Upon the building official or designee's reviewing the exterior of the rental unit and determining that there is probable cause to believe that the rental unit is in violation of this article;
  - (4) Upon receipt of information that the rental unit is not currently registered as required by this article;
  - (5) Upon being directed by resolution of the city council to initiate a city-wide rental unit inspection program; and
  - (6) Upon receipt of a request from an owner of a rental unit for an advisory inspection.
- (p) *Investigation in response to complaint*. Whenever a complaint is filed with the building official alleging that there is a violation of this article or related provisions of this article, the building official or his designee shall investigate the complaint. Such investigation shall include, if necessary, inspection of the interior of the dwelling. Prior to inspection of the interior of a dwelling, the building official shall notify the owner, agent, or landlord, and also the tenant of the time and date of the inspection at least forty-eight (48) hours prior to said inspection. The building official does not need to give prior notice for inspections of the exterior, and the building official shall have the right to conduct unannounced exterior inspections during daylight hours of any day, except for Saturday and Sunday. All complaints requesting an interior inspection of a rental dwelling must be

dated and signed by the owner or occupant specify the nature of the alleged violation and the means by which the complainant acquired direct, first-hand knowledge of the alleged violation.

- (q) *Scheduling of inspection.* Prior to occupancy by tenants, all rental units must have interior and exterior inspections completed by the building official or his authorized agent, and must be issued a registration. Such inspection shall be scheduled within ten (10) working days following notification by the owner to the building official that the building is ready for inspection.
- (r) *Appeals.* An aggrieved property owner, agent, landlord or city resident may appeal any order, requirement, determination or decision of the building official pertaining to the registration of rental dwellings. A fee shall be paid for each appeal to the construction board of appeals.
- (s) *Notices of violation.* Whenever, upon inspection of the registered premises, or of the records required to be kept hereunder, the building official finds that conditions or practices exist which are in violation of the provisions of this article or of any applicable rules and regulations pursuant thereto, he shall serve the owner or operator with notice of the violation in the manner provided by:
  - (1) Mailing the notice to the owner or operator by first class mail; or
  - (2) Personally delivering the notice to the owner or operator.
- (t) *Re-inspections.* At the end of the time he has allowed for correction of any violation cited, the building official or designee shall re-inspect the premises, and if he determines that such conditions have not been corrected, he may issue an order suspending the registration.
- (u) *Orders of suspension; reconsideration.* Any person whose license to operate a rental dwelling, multiple dwelling or rooming house, has been suspended, shall be entitled to a reconsideration of the order or a formal hearing, in the manner provided by this division. If no request for reconsideration or petition for hearing reaches the building official within twenty-one (21) days following the issuance of the order of suspension, the registration shall be revoked, except that prior to revocation any person whose registration has been suspended may request re-inspection upon a showing that the violation or violations cited in the notice have been corrected.
- (v) *Reissuance following successful reinspection.* If, upon re-inspection, the building official finds that the premises in connection with which the notice was issued is now in compliance with this division and with applicable rules and regulations issued pursuant thereto, he shall reinstate the registration. A request for re-inspection shall not extend the suspension period, unless the building official grants the request.
- (w) *Establishing registration and inspection fees.* The city council shall establish by resolution any fee or fees to be charged for the registration and/or inspection of each rental unit. Any such fee may be collected by the building official or designee.
- (x) *Payment of registration fees.* Any registration fee shall be paid by the owner(s) of each rental unit to the city building official. In the event a rental unit has more than one owner, each owner shall be jointly and severally liable for the registration fee. A late payment charge may be established by the city council if the registration fee is not paid within thirty (30) days after its billing date.
- (y) *Payment of inspection fees.* All inspection fees under this article shall be the responsibility of the owner(s) of each rental unit, except as follows:
  - (1) If the inspection is based upon a complaint filed by an owner of the rental unit, and the inspection reveals to the building official that a violation was caused by the occupant(s)/tenants of the rental unit, the occupant/tenant shall be responsible for payment of the inspection fee (if the building official cannot definitely determine that the violation was caused by the occupant(s) of the rental unit, then the owner(s) shall be liable for the inspection fee);



- (2) If the inspection is based upon a complaint made by the person other than the owner, and the inspection reveals to the building official no violation of this article, the complainant(s) shall be responsible for the payment of the inspection fee; or
- (3) The inspection is part of a city-wide rental unit inspection program initiated by the city council, in which case the city shall be responsible for the inspection fee.

In the event a rental unit has more than one (1) owner and the owners are liable for the inspection fee, or in the event a rental unit has more than one (1) occupant and the occupants are liable for the inspection fee, or in the event more than one (1) complainant files a complaint and the complainants are liable for the inspection fee, each owner or each occupant or each complainant (as the case may be) shall be jointly and severally liable for the inspection fee. A late payment charge may be established by the city council if the inspection fee is not paid within thirty (30) days after the billing date.

- (z) *Lack of valid registration.* No owner shall lease, rent or otherwise allow a rental unit to be occupied unless the rental unit is properly and currently registered as required by this article.
- (aa) *Order to vacate.* No person shall occupy a rental unit if the building official or designee orders that it be vacated due to one (1) or more violations of this article.
- (bb) *Termination of registration.* If the owner(s) of a rental unit fail to comply (or to force the occupant(s) of such rental unit to comply) with a notice received from the building official, or if the owner(s) or occupant(s) (as the case may be) of a rental unit fail to pay within thirty (30) days a billed and outstanding registration fee and/or inspection fee assessed pursuant to this article, the building official may suspend registration for such rental unit. In such event, the building official may post the rental unit and request the city's legal counsel to proceed at law to order the premises in violation to be vacated. Also in the event the building official suspends the registration for a rental unit, the building official shall notify the occupant(s) thereof that the occupant(s) may pay rent into a self-established escrow account until vacating the rental unit or until the registration of the rental unit is either reinstated or renewed. A terminated but not yet expired registration shall be reinstated for a rental unit once the requirements of the building official's notice are met and all outstanding registration fees and inspection fees and late payment charges thereon have been paid in full.
- (cc) *Administrative liability.* No officer, agent, employee, contractor or member of the city council shall be personally liable for any damage that may accrue to any person as a result of any act, decision or other consequence or occurrence arising out of the discharge of his or her duties and responsibilities pursuant to this article.
- (dd) *Savings clause.* This article shall not affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any portion of the Code of Ordinances superseded by this article; neither shall any just or legal right or remedy be lost, impaired or affected by this article.
- (ee) *Enforcement.* The city council shall designate by resolution the person whose duty it shall be to administer and enforce the provisions of this division within the city.

### **Article IIII** **Property Maintenance**

#### **Division 1 – Blight**

##### **Sec. 7-11. Short title.**

This division shall be known and may be designated as “The Blight Ordinance of the City of Allegan.”

## **Sec. 7-12. Definitions.**

As used in this division, the following terms are defined below:

- (a) *Blighted structure or building.* Any dwelling, garage, accessory or outbuilding, or any factory, shop, store, office building, warehouse, fence, or any other structure or part of a structure which:
  - (1) Because of fire, wind, other natural disaster, or physical deterioration, is no longer habitable as a dwelling or useful for the purpose for which it was originally intended;
  - (2) Is partially completed and which is not presently being constructed under an existing, valid building permit issued by or under the authority of the city;
  - (3) Is not structurally sound, weather-tight, waterproof or vermin-proof;
  - (4) Is not covered by a water resistant paint or other waterproof covering so as to protect said structure from the adverse effects of the elements or from physical deterioration;
  - (5) Causes or tends to cause devaluation of the subject property or other properties in the area; or
  - (6) Has any of the following conditions:
    - (A) Peeling paint.
    - (B) Sagging and deteriorating roof.
    - (C) Missing and/or damaged siding.
    - (D) Broken or deteriorating windows or doors.
    - (E) Unfinished exterior.
    - (F) Collapsing porch or deck.
    - (G) Cracked and broken foundation/chimney.
    - (H) Graffiti.
  - (7) Has veneer, cornices, belt courses, corbels, trim, wall facings or other similar decorative features not properly anchored or that are anchored with connections not capable of supporting nominal loads and resisting all load effects.
- (b) *Building material.* Any lumber, bricks, concrete, cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, cement, nails, screws, or other materials commonly used in the construction or repair of any buildings or structures.
- (c) *Enforcement officer.* The city manager, city building inspectors, community development coordinator, and any other individual that has been given enforcement duties by the city manager.
- (d) *Graffiti.* Any mark or marks on any surface or structure made without the prior permission of the property owner and made in any manner, including but not limited to, writing, inscribing, drawing, tagging, sketching, spray-painting, painting, etching, scratching, carving, engraving, scraping, or attaching. Chalk marks on sidewalks are not graffiti.
- (e) *Inoperable Vehicle.* Any motor vehicle which is inoperative for any reason such as being in a state of disassembly, disrepair, stripped, dismantled or which cannot be operated under its own power or cannot function as it was intended and designed to function legally on the roadway, but shall exclude vehicles in process at auto sales and dealership service facilities and auto engine and

body repair shops which are to be repaired and made operable within ninety (90) days

(g) *Issuance of the notice.* Any of the following events:

- (1) Mailing the notice to the responsible party's last known address by first class mail;
- (2) Personal delivery of the notice to the responsible party;
- (3) The responsible party's receipt of the notice by email, as indicated in a notification of receipt; or
- (4) The reading of the notice to the responsible party over the phone.

(h) *Junk.* Any abandoned, discarded, unusable objects or equipment, any object or equipment unused for its originally intended purpose, including, but not limited to, furniture, furniture intended for indoor use which is placed outdoors, stoves, refrigerators, freezers, cans, barrels, farm implements, parts of motor vehicles, machinery, cloth, rubber, bottles, any metals, boxes, cartons or crates.

(i) *Responsible party.* A person who violates any of the provisions of this division, whether as owner, occupant, lessee, agent, operator, servant, or employee, except as herein otherwise provided.

(j) *Trash and rubbish.* Any and all forms of debris not herein otherwise identified, except domestic refuse stored in appropriate containers prior to periodic collection for proper disposal and domestic refuse stored in appropriate containers for composting purposes. The term "trash, rubbish or refuse" shall also include any combustible and noncombustible waste material, including, but not limited to, animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food, leaves, brush, tree limbs, wood, lumber, grass or other yard waste.

### **Sec. 7-13. Blighted structures or buildings prohibited.**

It shall be unlawful for any person to keep or maintain any blighted or vacant structure, building, dwelling, garage, outbuilding, factory, shop, store or warehouse in the city.

### **Sec. 7-14. Blighted exterior and maintenance requirement of property.**

It shall be unlawful for any person to fail to improve and maintain all property under the person's control so as to comply with the following minimum requirements:

- (a) All exterior property areas shall be properly maintained in a clean and sanitary condition, free from debris, brush, severed tree limbs, junk, rubbish, physical hazards, rodent harborage and infestation.
- (b) All stored firewood shall be in neat, orderly stacks, unless shielded from the ground level view from all adjoining properties.
- (c) The storage and accumulation of any building material in a visible exterior area shall only be for a period that is reasonably necessary for the future use of such materials, which shall in no event be longer than 90 days. Building materials must be piled off the ground so as not to become a suitable environment for rats, rodents or similar vermin.
- (d) In no case shall usable or unusable machinery, building materials, or other items be stored on a permanent basis in a truck trailer or other type of trailer, with or without its wheels, unless the trailer is enclosed.
- (e) Scaffolding may remain on a building only for a period that is reasonably necessary for the completion of the construction or maintenance activities for which it is erected, which shall in no event be longer than 90 days or the length of the related building permit, whichever is longer.

- (f) Conditions or activities that produce disagreeable or obnoxious odors or stenches or dense smoke, noxious fumes, gas, soot, or cinders in unreasonable qualities are prohibited.
- (g) Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.
- (h) Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be not less than 4 inches (102 mm) in height with a minimum stroke width of 0.5 inch (12.7 mm).

**Sec. 7-15. Enforcement and penalties.**

- (a) Any person that violates this division shall be responsible for a municipal civil infraction. Each day that a violation continues shall be deemed to be a separate violation.
- (b) Before commencing enforcement under this division, the enforcement officer shall issue notice to the responsible party charged with the violation, setting forth the violation specifics. The notice shall state the name of the person that the city considers to be the responsible party, and shall specify that failure to remedy the violation within no fewer than 10 days of the issuance of the notice may result in the issuance of a municipal civil infraction citation. The notice shall also state that the recipient has the right to appeal the notice to the construction board of appeals.
- (c) If the responsible party fails to abate the blight within the required time frame, the city may take action to abate the blight and may charge the cost of such abatement to the responsible party. The city treasurer shall bill the cost, plus an administration fee of 25 percent, to the responsible party. Such bills shall become due within 30 days of issuance, and it shall be a violation of this division to fail to pay a bill when due. The city may levy a single-lot special assessment in accordance with this Code of Ordinances as a means of recovering the full cost of abatement.
- (d) Abating the nuisance is not in lieu of, or an alternative to, pursuing the civil infraction in district court. Both civil infraction and abatement of the nuisance may be pursued by the city.

**Sec. 7-16. Appeal of notification of violation.**

- (a) A person receiving a notification of violation under section 7-5 of this division may appeal to the City Manager or his/her designee by filing an appeal form with the city clerk no later than ten days after the issuance of the notice. The appeal must be submitted on a standard appeal application form available in on the city's website or in the office of the city clerk. The appeal application must include a thorough description of the reason for appealing and shall be accompanied by any fee that may be required by the city council from time to time.
- (b) The City Manager or his/her designee shall set a reasonable time for hearing of the appeal within 30 days from the date on which the application form is received. The construction board of appeals shall provide the appellant, by first class mail, one notice of the public hearing date, time, and location.

- (c) The City Manager or his/her designee shall hear and decide appeals, and review on appeal any order, requirement, decision or determination, made by the enforcement officer in applying the requirements of this division. Upon such appeal, the City Manager or his/her designee may reverse or affirm the enforcement officer's determination in whole or in part.

**Sec. 7-17. Interpretation.**

Nothing in this division shall be interpreted to prohibit conduct or conditions expressly permitted under the city's zoning ordinance.

Division 2 - Dangerous Buildings

**Sec. 7-21. Dangerous building and structures ordinance.**

This ordinance is specifically authorized by the housing law, 1917 PA 167, as amended, and shall be known and cited as the City of Allegan Dangerous Buildings Ordinance.

**Sec. 7-22. Dangerous building unlawful.**

It shall be unlawful for any owner, agent, lessee or party in interest to keep or maintain any building or part thereof which is a dangerous building or structure as defined in this ordinance.

**Sec. 7-23. Dangerous building defined.**

As used in this ordinance, the term "dangerous building" means any building or structure, residential or otherwise, which has any of the following defects or is in any of the following conditions:

- (a) A door, aisle, passageway, stairway, or other means of exit does not conform to the requirements of the city's fire code.
- (b) A portion of the building or structure is damaged by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause so that the structural strength or stability of the building or structure is significantly impaired and the structure does not meet the minimum requirements of the housing law or the Michigan Building Code for a new building or structure, purpose, or location.
- (c) A part of the building or structure is likely to fall, become detached or dislodged, or collapse and injure persons or damage property.
- (d) A portion of the building or structure has settled to an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by the housing law or the Michigan Building Code.
- (e) The building or structure, or a part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.
- (f) The building, structure, or a part of the building or structure is manifestly unsafe for the purpose for which it is used.
- (g) The building or structure is damaged by fire, wind, or flood, is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
- (h) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or for other reason, is unsanitary or unfit for human habitation, is in a condition likely to cause sickness or disease, or is likely to injure the health, safety, or general welfare of people living in the dwelling.

- (i) A building or structure is vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

**Sec. 7-23. Notice of dangerous building.**

- (a) The city's building official may issue a notice pursuant to this section upon finding that a building or structure is a dangerous building. The notice shall be served on the owner, agent, or lessee registered with the city. If an owner, agent, or lessee is not registered with the city, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.
- (b) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained.
- (c) The hearing officer shall be appointed by the mayor to serve at his or her pleasure. The hearing officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the city shall not be appointed as hearing officer. The city shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer.
- (d) The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

**Sec. 7-24. Hearings and other proceedings.**

- (a) At the hearing, the hearing officer shall take testimony of the city, the owner of the property, and any interested party. Not more than 5 days after completion of the hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained.
- (b) If the hearing officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall enter an order that specifies what action the owner, agent, or lessee shall take and sets a date by which the owner, agent, or lessee shall comply with the order. If the building is a dangerous building under the provisions of this ordinance, the order may require the owner or agent, to bring and maintain the exterior of the building and adjoining grounds into compliance including, but not limited to, the maintenance of lawns, trees, and shrubs.
- (c) If the owner, agent, or lessee fails to appear or neglects or refuses to comply with the order issued under subsection (b), the hearing officer shall file a report of the findings and a copy of the order with the city's construction board of appeals not more than 5 days after the date for compliance set in the order and request that necessary action be taken to enforce the order. A copy of the findings and order of the hearing officer shall be served on the owner, agent, or lessee in the manner prescribed in Section 7-23.
- (d) The construction board of appeals shall set a date not less than 30 days after the hearing prescribed in subsection (a) for an appellate hearing on the findings and order of the hearing officer. The construction board of appeals shall give notice to the owner, agent, or lessee in the manner prescribed in Section 7- 23 of the time and place of the hearing. At the hearing, the owner, agent, or lessee shall be given the opportunity to show cause why the order should not be enforced. The

construction board of appeals shall either approve, disapprove, or modify the order. If the construction board of appeals approves or modifies the order, the city shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or lessee shall comply with the order within 60 days after the date of the hearing under this subsection. For an order of demolition, if the construction board of appeals of the city determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent, or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this subsection. If the estimated cost of repair exceeds the state equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires expedited demolition exists.

- (e) The cost of demolition includes, but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the county register of deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this ordinance. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure incurred by the city to bring the property into conformance with this ordinance shall be reimbursed to the city by the owner or party in interest in whose name the property appears.
- (f) The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within 30 days after mailing by the assessor of the notice of the amount of the cost, the city shall have a lien for the cost incurred by the city to bring the property into conformance with this ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the cost shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, as amended.
- (g) In addition to the other remedies provided under this ordinance, the city may bring an action against the owner of a dangerous building or structure for the full cost of demolition, of making the building safe, or of maintaining the exterior or grounds adjoining a dangerous building or structure. The city shall have a lien on the property for the amount of a judgment obtained under this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over prior filed or recorded liens and encumbrances.

#### **Sec. 7-25. Enforcement of judgment against other assets.**

- (a) A judgment in an action brought pursuant to subsection 7-24(g) may be enforced against assets of the owner other than the building or structure.
- (b) The city shall have a lien for the amount of a judgment obtained pursuant to subsection 7-24(g) against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien provided for in this section does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens or encumbrances.

#### **Sec. 7-26. Penalties.**

- (a) A person who violates any provision of this dangerous building ordinance shall be responsible for a municipal civil infraction.
- (b) A person who fails or refuses to comply with an order approved or modified by the construction board of appeals is guilty of misdemeanor punishable by imprisonment for not more than 120 days or a fine of not more than \$1,000 or both.

**Sec. 7-27. Appeal of circuit court.**

An owner or party in interest aggrieved by any final decision of the construction board of appeals may appeal the decision or order to the Allegan County Circuit Court by filing an appeal within 20 days from the date of such decision.

Division 3 – International Property Maintenance Code

**Sec. 7-31. Enforcement of the International Property Maintenance Code, 2015 Edition.**

- (a) *Adoption of code.* The International Property Maintenance Code, 2015 Edition, including Appendix A, as promulgated and published by the International Code Council, Inc., is adopted by reference as the Property Maintenance Code of the City of Allegan, and made a part of this chapter as if fully set forth in this article, subject to the modifications provided in this article and subject to such further modifications as the city shall adopt from time to time.
- (b) *Definitions.* Whenever the words "*city*," "*jurisdiction*" or "*governmental unit*" are used in the International Property Maintenance Code, 2015 Edition, they shall mean the City of Allegan. Whenever the word "*state*" is used in the International Property Maintenance Code, 2015 Edition, it shall mean the State of Michigan.
- (c) *Amendments to the Property Maintenance Code.* The International Property Maintenance Code, 2015 Edition, including Appendix A, is amended as follows:
  - (1) *Section 101.1* is amended to read in its entirety as follows:

*101.1. Title.* These regulations shall be known and may be cited as the "Property Maintenance Code of the City of Allegan," and will be referred to in this article as this "Code."
  - (2) *Section 102.3* is amended to read in its entirety as follows:

*102.3. Application of other codes.* Repairs, additions, or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code and the City of Allegan Fire Code. Nothing in this Code shall be construed to cancel, modify or set aside any provision of the City of Allegan Zoning Ordinance.
  - (3) *Section 102.3.1* is added to read in its entirety:

*102.3.1. Reference to other codes.* Whenever the "International Building Code" or "building code" is referenced in this Code it shall mean the Michigan Building Code. Whenever the "International Mechanical Code" is referenced in this Code it shall mean the Michigan Mechanical Code. Whenever the "International Plumbing Code" is referenced in this Code it shall mean the Michigan Plumbing Code. Whenever the "International Electrical Code" or "NFPA 70" is referenced in this Code it shall mean the Michigan Electrical Code. Whenever the "International Fire Code", "fire code" or "NFPA 25" is referenced in this Code it shall mean the City of Allegan Fire Code. Whenever the "International Zoning Code" is referenced in this Code it shall mean the City of Allegan Zoning Ordinance.
  - (4) *Section 103.1* is amended to read in its entirety as follows:



*103.1. General.* Whenever the terms "code official" or "building official" are used in this Code it shall mean the designated building inspector of the city.

- (5) *Section 103.4* is amended to read in its entirety as follows:

*103.4. Liability.* The code official, member of the City of Allegan Construction Board of Appeals or city employee charged with the enforcement of this Code, while acting for the city, in good faith and without malice in the discharge of the duties required by this Code or other pertinent law or ordinance, shall not be rendered liable personally, and is relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Code shall be defended by legal representative of the city until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Code.

- (6) *Section 103.5* is amended to read in its entirety as follows:

*103.5. Fees.* The city council shall by resolution from time to time, establish a fee schedule for permits under this Code.

- (7) *Section 106.3* is amended to read in its entirety as follows:

*106.3. Prosecution of violation.* Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed responsible for a municipal civil infraction, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Code or of the order or direction made pursuant to this Code. Any action taken by the City of Allegan on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

- (8) *Section 106.4* is amended to read in its entirety as follows:

*106.4. Violation penalties.* Any violation of this Code shall be punishable as a municipal civil infraction as provided in and subject to the fines and penalties provided under Section 1-14 of the Code of Ordinances of the City of Allegan.

- (9) *Section 111.1* is amended to read in its entirety as follows:

*111.1. Construction Board of Appeals.* All appeals under this Code shall be brought before the City of Allegan Construction Board of Appeals which board is authorized and has jurisdiction to hear and decide appeals of orders, decisions, or determinations made by the code official relative to the application and interpretation of this Code, using the rules of procedures adopted by the Construction Board of Appeals.

- (10) *Section 111.2* is deleted in its entirety.

- (11) *Section 111.2.1* is deleted in its entirety.

- (12) *Section 111.2.2* is deleted in its entirety.

- (13) *Section 111.2.3* is deleted in its entirety.

- (14) *Section 111.2.4* is deleted in its entirety.

- (15) *Section 111.2.5* is deleted in its entirety.

- (16) *Section 111.3* is deleted in its entirety.
- (17) *Section 111.4* is deleted in its entirety.
- (18) *Section 111.4.1* is deleted in its entirety.
- (19) *Section 111.5* is deleted in its entirety.
- (20) *Section 111.6* is deleted in its entirety.
- (21) *Section 111.6.1* is deleted in its entirety.
- (22) *Section 111.6.2* is deleted in its entirety.
- (23) *Section 111.7* is deleted in its entirety.
- (24) *Section 111.8* is deleted in its entirety.
- (25) *Section 112.4* is amended to read in its entirety as follows:
- 112.4. Failure to comply.* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this Code.
- (26) *Section 201.3* is amended to read in its entirety as follows:
- 201.3. Terms defined in other codes.* Where terms are not defined in this Code and are defined in the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code, the City of Allegan Fire Code or the City of Allegan Zoning Ordinance, such terms shall have the meanings ascribed to them as stated in those codes or ordinances.
- (27) *Section 302.4* insert "eight (8) inches in height."
- (28) *Section 304.14* insert "May 1 to October 31."
- (29) *Section 602.2* is amended to read in its entirety as follows:
- 602.2. Residential occupancies.* Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature as provided within the Michigan Plumbing Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.
- (30) *Section 602.3* is amended to read in its entirety as follows:
- 602.3. Heat supply.* Every owner or operator of any building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish a heating system to the occupants thereof shall supply heat during the period from October 1 to May 1 to maintain a temperature of not less than 65 degrees F. (18 degrees C.) in all habitable rooms, bathrooms, and toilet rooms.
- Exception:* When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the City of Allegan shall be 6 degrees F.
- (31) *Section 602.4* is amended to read in its entirety as follows:

602.4. *Occupiable work spaces.* Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 1 to maintain a temperature of not less than 65 degrees F during the period the spaces are occupied.

*Exceptions:* Processing, storage and operation areas that require cooling or special temperature conditions or areas in which persons are primarily engaged in vigorous physical activities.

- (d) *Copies of code.* A complete copy of the International Property Maintenance Code, 2015 Edition, including Appendix A, is available for public use, inspection and purchase at the offices of the city clerk.

#### Division 4 – Grass and Noxious Weeds

##### **Sec. 7-51. Definitions**

These words and phrases shall have the following meanings when used in this division:

- (a) *Ground-cover vegetation* means any of a variety of low-growing or trailing plants used to cover patches of ground.
- (b) *Issuance of the notice* means posting of a notice on the property or personally serving notice on the responsible party.
- (c) *Noxious weeds* means the following plants only: Canada thistle (*Cirsium arvense*), dodders (any species of *Cuscuta*), mustards (charlock, black mustard, and Indian mustard, species of *Brassica* or *Sinapis*), wild carrot (*Daucus carota*), bindweed (*Convolvulus arvensis*), perennial sowthistle (*Sonchus arvensis*), hoary alyssum (*Berteroa incana*), giant hogweed (*Heracleum mantegazzianum*), ragweed (*Ambrosia elatior* L.), and poison ivy (*Rhus toxicodendron*), and poison sumac (*Toxicodendron vernix*).
- (d) *Property owner* means a person who holds record title to a parcel of real estate.
- (e) *Responsible party* generally means the property owner, except that:
- (1) A tenant or other person shall be a responsible party (in addition to the property owner) upon expressly assuming responsibility in a written contract with the property owner; and
  - (2) The manager of a business shall be a responsible party (in addition to the property owner) with respect to the property on which the business is situated. For purposes of this section, the term "manager" means the individual that exercises the most control over the day-to-day operations of the business on the property.

##### **Sec. 7-52. Duty to remove noxious weeds and maintain grass.**

The responsible party for each private property in the city shall be required to keep the property free from noxious weeds and ensure that grass and other ground-cover vegetation on the property does not grow in excess of eight (8) inches in height. The duties established under this section extend to the portions of the abutting public right-of-way that would become part of the property if the right-of-way were vacated. The responsible party shall have discretion in determining how to landscape and maintain the vegetation in the abutting right-of-way, so long as the landscaping and maintenance complies with all applicable laws, regulations, and ordinances and so long as it does not overhang any sidewalk or other public way in a manner that will interfere or brush against any person using that public way and as long as it does not interfere with the clear vision of vehicle drivers or pedestrians entering and exiting the property.

##### **Sec. 7-53. Enforcement and abatement.**

- (a) Any person that violates this division shall be responsible for a municipal civil infraction. Each day that a violation continues shall be deemed to be a separate violation.
- (b) Before commencing enforcement under this division, the enforcement officer shall issue notice to the responsible party charged with the violation, setting forth the violation specifics. The notice shall state the name of the person that the city considers to be the responsible party, and shall specify that failure to remedy the violation may result in the issuance of a municipal civil infraction citation if such remedy is not complete within 48 hours after the issuance of the notice. The notice shall also state that the recipient has the right to appeal the notice to the City Manager.
- (c) If the responsible party fails to abate the blight within the required time frame, the city may take action to abate the violation and may charge the cost of such abatement to the responsible party. The city treasurer shall bill the cost, plus an administration fee of 25 percent, to the responsible party. Such bills shall become due within 30 days of issuance, and it shall be a violation of this division to fail to pay a bill when due. The city may levy a single-lot special assessment in accordance with this Code of Ordinances as a means of recovering the full cost of abatement.
- (d) Abating the nuisance is not in lieu of, or an alternative to, pursuing the civil infraction in district court. Both civil infraction and abatement of the nuisance may be pursued by the city.

#### Division 4 - Freestanding Outdoor Furnaces

##### **Sec. 7-61. Purpose.**

It is the purpose of this division to ban the construction and operation of outdoor furnaces within the limits of the City of Allegan for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the city and its inhabitants. The types of fuel used and the scale and duration of the burning by such furnaces create noxious and hazardous smoke, soot, fumes, odors, air pollution, particles, and other products of combustion that can be detrimental to citizens' health and can deprive neighboring residents of the enjoyment of their property or premises. Moreover, the restricted airflow, low operating temperatures, lack of emission controls, and large fuel loads associated with these units frequently result in excessive smoke. Under some conditions smoke can cause both acute and chronic health problems to other residents if they are exposed to the smoke.

##### **Sec. 7-62. Definition.**

The term "freestanding outdoor furnace" shall mean any device, appliance, equipment, apparatus, or structure that:

- (a) Is designed, intended and/or used to provide hot water heat and/or hot water to any associated structure.
- (b) Operates by burning wood or any other solid fuel including but not limited to: coal, paper pellets, and agricultural products.
- (c) Is not located within the structure to be heated.

##### **Sec. 7-63. Existing outdoor furnaces.**

- (a) Any outdoor furnace existing as of June 25, 2007, which was registered with the city within thirty (30) days of that date may continue in operation except as provided in this section.
- (b) If an existing outdoor furnace is not operated for twelve (12) consecutive months, it may not be used again and must be dismantled or otherwise be removed from the property.
- (c) No new or replacement of existing outdoor furnace shall be installed or put into use.
- (d) This section shall not be deemed as specific authorization for the use of any preexisting

freestanding outdoor furnace designed for structure heat and shall not be deemed to bar, limit, or otherwise affect the rights of any person to take private or legal action regarding damage or nuisance caused by the use of a freestanding outdoor furnace designed for structure heat.

**Sec. 7-64. Installation and operation prohibited.**

- (a) Except as provided in Section 7-63, it shall be unlawful to install, maintain, or operate freestanding outdoor furnaces designed for structure heat and to cause or permit the installation or operation of freestanding outdoor furnaces within the city.
- (b) Nothing contained herein shall authorize any installation that is a public or private nuisance, regardless of compliance herewith.
- (c) This division shall not be a defense to any civil claims.
- (d) Any person who violates this section shall be responsible for a municipal civil infraction. Further, violations shall be deemed a nuisance per se.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023

CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND THE CHAPTER 7 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES TO CONSOLIDATE AND PROVIDE UPDATED  
REGULATIONS PERTAINING TO BUILDINGS AND PROPERTY  
MAINTENANCE

The City of Allegan ordains:

Section 1. Amendment. Chapter 7 of the City of Allegan, Code of Ordinances is hereby renamed “Buildings and Property Maintenance” and amended to read in its entirety as follows:

Article I

~~Construction Code~~ Chapter 7—BUILDINGS AND BUILDING REGULATIONS<sup>111</sup>  
ARTICLE I.—IN GENERAL

**Sec. 7-1. —Penalty.**

- ~~(a) Unless a section in this chapter specifically provides otherwise, a first violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than fifty dollars (\$50.00).~~
- ~~(b) Unless a section in this chapter specifically provides otherwise, a second violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than one hundred and fifty dollars (\$150.00).~~
- ~~(c) Unless a section in this chapter specifically provides otherwise, a third violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than three hundred dollars (\$300.00).~~
- ~~(d) In addition to a fine, a person determined to be responsible for a municipal civil infraction under this chapter shall be assessed the cost of prosecution of not less than nine dollars (\$9.00) but not to exceed five hundred dollars (\$500.00).~~
- ~~(e) The fourth and any subsequent violation of any provision of this chapter, by any person, is a misdemeanor which shall, upon conviction, be punishable in accordance with section 1-13 of this Code.~~
- ~~(f) In addition to the penalties provided by this section, the district court shall have equitable jurisdiction to enforce any judgment, writ, or order necessary to enforce any provision, the violation of which is a municipal civil infraction, including, but not limited to, abatement of the violating condition or the granting of any injunctive relief.~~

~~(Ord. No. 319, § 2, 8-12-96)~~

~~Sees. 7-2—Administration<sup>7-15</sup>.—Reserved.~~

ARTICLE II.—CONSTRUCTION CODE

~~Sec. 7-16.—Assumption of administration and enforcement of Michigan Construction Code.~~

~~Pursuant to Section 8 of the Stille-Derossett-Hale Single State~~ The city has assumed **Construction Code** ~~Act, Act 230 of the Public Acts of 1972, as amended, the city assumes~~ responsibility for the administration and enforcement of the Michigan Construction Code, including the building, electrical,

plumbing and mechanical codes ~~throughout its corporate limits, throughout its corporate limits. The city's building official is principally charged with the administration and enforcement of the codes. Any fees provided for in the codes shall be as prescribed by resolution of the city council.~~

~~(Ord. No. 106, § 1, 5-28-85; Ord. No. 359, § 1, 7-23-01)~~

~~State Law reference—Authority to adopt technical code by reference, MCL 117.3(k).~~

## Article II

### Rental Registration

#### ~~Sec. 7-17. Enforcing agents.~~

~~The designated enforcing agents to discharge the responsibilities of the city under the Michigan Construction Code are as follows:~~

- ~~(a) *Building code.* The building inspector of the city is designated as the enforcing agent to discharge the responsibility of the city under the Michigan Building Code.~~
- ~~(b) *Electrical code.* The electrical inspector of the city is designated as the enforcing agent to discharge the responsibility of the city under the Michigan Electrical Code.~~
- ~~(c) *Mechanical code.* The mechanical inspector of the city is designated as the enforcing agent to discharge the responsibility of the city under the Michigan Mechanical Code.~~
- ~~(d) *Plumbing Code.* The plumbing inspector of the city is designated as the enforcing agent to discharge the responsibility of the city under the Michigan Plumbing Code.~~

~~(Ord. No. 106, § 2, 5-28-75; Ord. No. 359, § 2, 7-23-01)~~

#### ~~Sec. 7-18. Fees.~~

~~Fees required under the state construction code shall be as prescribed by resolution of the council.~~

~~Secs. 7-19 – 7-35. Reserved.~~

## ~~ARTICLE III. EXISTING STRUCTURES CODE~~

### ~~Sec. 7-36. Enforcement of the International Property Maintenance Code, 2015 Edition.~~

- ~~(a) *Adoption of code.* The International Property Maintenance Code, 2015 Edition, including Appendix A, as promulgated and published by the International Code Council, Inc., is adopted by reference as the Property Maintenance Code of the City of Allegan, and made a part of this chapter as if fully set forth in this article, subject to the modifications provided in this article and subject to such further modifications as the city shall adopt from time to time.~~
- ~~(b)(a) *Definitions.* Whenever the words "city," "jurisdiction" or "governmental unit" are used in the International Property Maintenance Code, 2015 Edition, they shall mean the City of Allegan. Whenever the word "state" is used in the International Property Maintenance Code, 2015 Edition, it shall mean the State of Michigan.~~
- ~~(c)(a) *Amendments to the Property Maintenance Code.* The International Property Maintenance Code, 2015 Edition, including Appendix A, is amended as follows:~~
  - ~~(1) *Section 101.1* is amended to read in its entirety as follows:~~

~~101.1. Title. These regulations shall be known and may be cited as the "Property Maintenance Code of the City of Allegan," and will be referred to in this article as this "Code."~~
  - ~~(2) *Section 102.3* is amended to read in its entirety as follows:~~

~~102.3. Application of other codes. Repairs, additions, or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code and the City of Allegan Fire Code. Nothing in this Code shall be construed to cancel, modify or set aside any provision of the City of Allegan Zoning Ordinance.~~

~~(3) Section 102.3.1 is added to read in its entirety:~~

~~102.3.1. Reference to other codes. Whenever the "International Building Code" or "building code" is referenced in this Code it shall mean the Michigan Building Code. Whenever the "International Mechanical Code" is referenced in this Code it shall mean the Michigan Mechanical Code. Whenever the "International Plumbing Code" is referenced in this Code it shall mean the Michigan Plumbing Code. Whenever the "International Electrical Code" or "NFPA 70" is referenced in this Code it shall mean the Michigan Electrical Code. Whenever the "International Fire Code", "fire code" or "NFPA 25" is referenced in this Code it shall mean the City of Allegan Fire Code. Whenever the "International Zoning Code" is referenced in this Code it shall mean the City of Allegan Zoning Ordinance.~~

~~(4) Section 103.1 is amended to read in its entirety as follows:~~

~~103.1. General. Whenever the "department of property maintenance inspection" is used in this Code it shall mean the City of Allegan Building Department. Whenever the terms "code official" or "building official" are used in this Code it shall mean the designated building inspector of the city.~~

~~(5) Section 103.4 is amended to read in its entirety as follows:~~

~~103.4. Liability. The code official, member of the City of Allegan Construction Board of Appeals or city employee charged with the enforcement of this Code, while acting for the city, in good faith and without malice in the discharge of the duties required by this Code or other pertinent law or ordinance, shall not be rendered liable personally, and is relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Code shall be defended by legal representative of the city until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Code.~~

~~(6) Section 103.5 is amended to read in its entirety as follows:~~

~~103.5. Fees. The city council shall by resolution from time to time, establish a fee schedule for permits under this Code.~~

~~(7) Section 106.3 is amended to read in its entirety as follows:~~

~~106.3. Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed responsible for a municipal civil infraction, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Code or of the order or direction made pursuant to this Code. Any action taken by the City of Allegan on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.~~



~~(8) Section 106.4 is amended to read in its entirety as follows:~~

~~106.4. Violation penalties. Any violation of this Code shall be punishable as a municipal civil infraction as provided in and subject to the fines and penalties provided under Section 1-14 of the Code of Ordinances of the City of Allegan.~~

~~(9) Section 111.1 is amended to read in its entirety as follows:~~

~~111.1. Construction Board of Appeals. All appeals under this Code shall be brought before the City of Allegan Construction Board of Appeals which board is authorized and has jurisdiction to hear and decide appeals of orders, decisions, or determinations made by the code official relative to the application and interpretation of this Code, using the rules of procedures adopted by the Construction Board of Appeals.~~

~~(10) Section 111.2 is deleted in its entirety.~~

~~(11) Section 111.2.1 is deleted in its entirety.~~

~~(12) Section 111.2.2 is deleted in its entirety.~~

~~(13) Section 111.2.3 is deleted in its entirety.~~

~~(14) Section 111.2.4 is deleted in its entirety.~~

~~(15) Section 111.2.5 is deleted in its entirety.~~

~~(16) Section 111.3 is deleted in its entirety.~~

~~(17) Section 111.4 is deleted in its entirety.~~

~~(18) Section 111.4.1 is deleted in its entirety.~~

~~(19) Section 111.5 is deleted in its entirety.~~

~~(20) Section 111.6 is deleted in its entirety.~~

~~(21) Section 111.6.1 is deleted in its entirety.~~

~~(22) Section 111.6.2 is deleted in its entirety.~~

~~(23) Section 111.7 is deleted in its entirety.~~

~~(24) Section 111.8 is deleted in its entirety.~~

~~(25) Section 112.4 is amended to read in its entirety as follows:~~

~~112.4. Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this Code.~~

~~(26) Section 201.3 is amended to read in its entirety as follows:~~

~~201.3. Terms defined in other codes. Where terms are not defined in this Code and are defined in the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code, the City of Allegan Fire Code or the City of Allegan Zoning Ordinance, such terms shall have the meanings ascribed to them as stated in those codes or ordinances.~~

~~(27) Section 302.4 insert "ten (10) inches in height."~~

~~(28) Section 304.14 insert "May 1 to October 31."~~

~~(29) Section 602.2 is amended to read in its entirety as follows:~~

~~602.2. Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature as provided within the Michigan Plumbing Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.~~

~~(30) Section 602.3 is amended to read in its entirety as follows:~~

~~602.3. Heat supply. Every owner or operator of any building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish a heating system to the occupants thereof shall supply heat during the period from October 1 to May 1 to maintain a temperature of not less than 65 degrees F. (18 degrees C.) in all habitable rooms, bathrooms, and toilet rooms.~~

~~Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the City of Allegan shall be 6 degrees F.~~

~~(31) Section 602.4 is amended to read in its entirety as follows:~~

~~602.4. Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 1 to maintain a temperature of not less than 65 degrees F during the period the spaces are occupied.~~

~~Exceptions: Processing, storage and operation areas that require cooling or special temperature conditions or areas in which persons are primarily engaged in vigorous physical activities.~~

~~(d) Copies of code. A complete copy of the International Property Maintenance Code, 2015 Edition, including Appendix A, is available for public use, inspection and purchase at the offices of the city clerk.~~

**~~Sec. 7-38.~~ 5. Registration of the operation of rental units, rental dwellings, multiple dwellings and rooming houses.**

(a) ~~Definitions:~~ These words and phrases shall have the following meanings when used in this article:

~~(1) For purposes of this section, "dwelling"~~ (1) Building official shall mean the city's building official and his or her designees.

~~(2) Dwelling~~ (2) Dwelling shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided that temporary housing shall not be regarded as a dwelling.

~~(2) For purposes of this section "dwelling"~~ Dwelling unit" shall mean one (1) room or suite of two (2) or more rooms providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

~~(3) For purposes of this section, "rental"~~ Rental unit" shall mean any dwelling or dwelling unit, multiple dwelling or rooming house occupied by a person or persons who is/are not the owner(s) of the property in which the dwelling or dwelling unit is located.

~~(4) For purposes of this section, "temporary"~~ Temporary or "transient" when referring to a dwelling, rental unit, housing or other living quarters shall mean for a period of occupancy of thirty (30) days or less.

~~(5) For purposes of this section, "building official" shall mean "code official" as used in the International Property Maintenance Code, as well as any duly authorized representative or designee.~~

- (b) Registration required. No person shall operate a rental unit unless he holds a current registration issued by the building official in his name for the specifically named dwelling, multiple dwelling or rooming houses.
- (c) Required inspection. No rental unit may be registered or re-registered unless it is first inspected by the building official or designee. If the rental unit does not comply with ~~the requirements of the code, in addition to the penalty provisions provide below~~ applicable federal, state, and local requirements, including the city's blight ordinance and other applicable property maintenance regulations, the building official or designee may refuse to register or re-register the rental unit, or may register or re-register the rental unit subject to certain specified conditions which shall be met in order for the registration or re-registration to remain valid.
- (d) Registration validity. Except as set forth in subsections (l), every registration shall be issued for a period of three (3) years unless sooner revoked, and may be renewed for successive periods of three (3) years. Registrations shall be issued for those units and dwellings which conform to all federal, state, and local requirements, including the city's blight ordinance and other applicable property maintenance ~~code currently in use by the city~~ regulations.
- (e) Building official. The building official is hereby authorized, upon application therefore, to issue new operating registrations, and renewals thereof, in the names of applicant owners or operators of rental dwellings, multiple dwellings and rooming houses. No such registrations shall be issued unless such premises for which the registration is sought, is found, after inspection, to meet all requirements of this article and applicable rules and regulations pursuant thereto.
- (f) Application. No registration shall be issued or renewed unless the applicant owner or operator has first made application therefore on an application form provided by the building official. The building official shall develop such forms and make them available to the public.
- (g) Consent to inspections. No registration shall be issued or renewed unless the applicant owner or operator agrees in his application to such inspections as the building official may require to determine whether the premises is in compliance with the provisions of this article and with applicable rules and regulations pursuant thereto.
- ~~(h)~~ (h) Registration and inspection fee. No registration shall be issued or renewed unless the completed application form is accompanied by the payment of a registration and inspection fee as prescribed in the officially adopted resolutions of this city.
- (i) Required information. No registration shall be provided or renewed unless the owner annually provides the building official with the current occupant name, indicating dwelling unit address, phone number, as well as the owner's name, address and telephone number. The owner may designate in writing to the building official the name of an agent for the receipt of services of notice that there is a violation of the provisions of this article and for service of process pursuant to this article. Whenever the name, address, or telephone number of the occupant, owner, or his agent changes such information shall be provided to the building official immediately.
- (j) Renewals. All applications for a registration renewal must be submitted to the building official, or his designee, thirty (30) days prior to the date on which the registration expires. The city manager may extend the deadline for submission of the registration application.
- (k) Late filing fee. For any rental dwelling for which a timely application has not been filed, a late filing fee per unit shall be charged. No registration shall be issued until all filing fees have been paid. Prior to charging a late fee, the last known owner of record shall be notified in writing at his last

known address of the need for a registration application, and given forty-eight (48) hours to provide the city with the information necessary for registration.

- (l) Conducting of inspection. Following the receipt of an application for registration, or renewal thereof, accompanied by the filing fee, if applicable, the building official or his authorized agent shall make an initial interior and exterior inspection. Upon initial inspection, if the building official finds that the dwelling in question meets all requirements of this article and all other applicable ordinances of the city and there are no outstanding violation notices concerning the dwelling, the building official shall direct that the registration or registration renewal issued for such dwelling be for a period of three (3) years. If the building inspector upon initial inspection finds that the interior or exterior of the unit in question does not meet all the requirements of this article and all other applicable ordinances of the city, the owner, agent, or landlord, of the rental dwelling shall be notified in writing of the nature of the violations and the date by which the violations must be corrected. Upon finding that each unit and the interior and exterior of the dwelling meets all the requirements of this article and all other applicable ordinances of the city, the building official shall issue ~~ana~~ registration for each dwelling.

~~(m) All rental dwellings must have an initial interior and exterior inspection scheduled within thirty (30) days prior to the date on which the registration expires.~~ (m) Transfer. If ownership of the dwelling is transferred during the time that the registration is valid, the registration shall transfer to the new owner upon receipt by the building official of the name, address and telephone number of the new owner. A registration that has been transferred shall expire or be renewed at the same time as if it had not been transferred.

- (n) *Period for registration of rental units.* Rental units required to be registered pursuant to this ~~section~~article shall comply with the following requirements, to the extent applicable:

- (1) Each newly constructed or newly converted rental unit shall be registered within thirty (30) days after the city issues a certificate of occupancy or an occupancy permit.
- (2) Each rental unit which is sold, transferred or otherwise conveyed in whole or in part shall be re-registered within thirty (30) days after the date of the deed, land contract or other instrument of conveyance.
- (3) Each newly converted rental unit which is so converted without the issuance of a certificate of occupancy or an occupancy permit shall be registered within thirty (30) days after the date the rental unit is first occupied for rental purposes.
- (4) Each rental unit shall be scheduled for inspection and re-registered within thirty (30) days after the expiration of its then current registration. ~~Each registration shall be for three (3) years, unless terminated prior thereto by sale, transfer or other conveyance of the rental unit, or unless terminated prior thereto as provided in this section.~~

- (o) *Supplemental inspection.* In addition to the inspection required in ~~sub-section~~subsection (d) above when a rental unit is registered or re-registered, the building official or designee ~~shall~~may also inspect a rental unit upon the occurrence of any of the following events:

- (1) Upon receipt of a complaint from an owner or an occupant of the rental unit that it is in violation of this ~~Code~~article;
- (2) Upon receipt of a complaint from any law enforcement department or other public agency or any other individual having personal knowledge that the rental unit is in violation of this ~~Code~~article;
- (3) Upon the building official or ~~designee's~~designee's reviewing the exterior of the rental unit and determining that there is probable cause to believe that the rental unit is in violation of this ~~Code~~article;

- (4) Upon receipt of information that the rental unit is not currently registered as required by this ~~Code~~article;
- (5) Upon being directed by resolution of the city council to initiate a city-wide rental unit inspection program; and
- (6) Upon receipt of a request from an owner of a rental unit for an advisory inspection.

~~(p)~~-(p) Investigation in response to complaint. Whenever a complaint is filed with the building official alleging that there is a violation of this article or related provisions of ~~the City of Allegan Code of Ordinances~~this article, the building official or his designee shall investigate the complaint. Such investigation shall include, if necessary, inspection of the interior of the dwelling. Prior to inspection of the interior of a dwelling, the building official shall notify the owner, agent, or landlord, and also the tenant of the time and date of the inspection at least forty-eight (48) hours prior to said inspection. The building official does not need to give prior notice for inspections of the exterior, and the building official shall have the right to conduct unannounced exterior inspections during daylight hours of any day, except for Saturday and Sunday. All complaints requesting an interior inspection of a rental dwelling must be dated and signed by the owner or occupant specify the nature of the alleged violation and the means by which the complainant acquired direct, first-hand knowledge of the alleged violation.

(q) Scheduling of inspection. Prior to occupancy by tenants, all rental units must have interior and exterior inspections completed by the building official or his authorized agent, and must be issued a registration. Such inspection shall be scheduled within ten (10) working days following notification by the owner to the building official that the building is ready for inspection.

(r) Appeals. An aggrieved property owner, agent, landlord or city resident may appeal any order, requirement, determination or decision of the building official pertaining to the registration of rental dwellings. A fee shall be paid for each appeal to the construction board of appeals.

(s) Notices of violation. Whenever, upon inspection of the registered premises, or of the records required to be kept hereunder, the building official finds that conditions or practices exist which are in violation of the provisions of this article or of any applicable rules and regulations pursuant thereto, he shall serve the owner or operator with notice of the violation in the manner provided by ~~the Code.~~;

(1) Mailing the notice to the owner or operator by first class mail; or

(2) Personally delivering the notice to the owner or operator.

(t) Re-inspections. At the end of the time he has allowed for correction of any violation cited, the building official or designee shall re-inspect the premises, and if he determines that such conditions have not been corrected, he may issue an order suspending the registration.

~~(u)~~-(u) Orders of suspension; reconsideration. Any person whose license to operate a rental dwelling, multiple dwelling or rooming house, has been suspended, ~~and~~ shall be entitled to a reconsideration of the order or a formal hearing, in the manner provided by this ~~article~~division. If no request for reconsideration or petition for hearing reaches the building official within twenty-one (21) days following the issuance of the order of suspension, the registration shall be revoked, except that prior to revocation any person whose registration has been suspended may request re-inspection upon a showing that the violation or violations cited in the notice have been corrected.

~~(v)~~-(v) Reissuance following successful reinspection. If, upon re-inspection, the building official finds that the premises in connection with which the notice was issued is now in compliance with this ~~article~~division and with applicable rules and regulations issued pursuant thereto, he shall

reinstate the registration. A request for re-inspection shall not extend the suspension period, unless the building official grants the request.

- (w) *Establishing registration and inspection fees.* The city council shall establish by resolution any fee or fees to be charged for the registration and/or inspection of each rental unit. Any such fee may be collected by the building official or designee.
- (x) *Payment of registration fees.* Any registration fee shall be paid by the owner(s) of each rental unit to the city building official. In the event a rental unit has more than one owner, each owner shall be jointly and severally liable for the registration fee. A late payment charge may be established by the city council if the registration fee is not paid within thirty (30) days after its billing date.
- (y) *Payment of inspection fees.* All inspection fees under this ~~section~~article shall be the responsibility of the owner(s) of each rental unit, except as follows:
  - (1) If the inspection is based upon a complaint filed by an owner of the rental unit, and the inspection reveals to the building official that a violation was caused by the occupant(s)/tenants of the rental unit, the occupant/tenant shall be responsible for payment of the inspection fee (if the building official cannot definitely determine that the violation was caused by the occupant(s) of the rental unit, then the owner(s) shall be liable for the inspection fee);
  - (2) If the inspection is based upon a complaint made by the person other than the owner, and the inspection reveals to the building official no violation of this ~~Code~~article, the complainant(s) shall be responsible for the payment of the inspection fee; or
  - (3) The inspection is part of a city-wide rental unit inspection program initiated by the city council, in which case the city shall be responsible for the inspection fee.

In the event a rental unit has more than one (1) owner and the owners are liable for the inspection fee, or in the event a rental unit has more than one (1) occupant and the occupants are liable for the inspection fee, or in the event more than one (1) complainant files a complaint and the complainants are liable for the inspection fee, each owner or each occupant or each complainant (as the case may be) shall be jointly and severally liable for the inspection fee. A late payment charge may be established by the city council if the inspection fee is not paid within thirty (30) days after the billing date.

- (z) *Lack of valid registration.* No owner shall lease, rent or otherwise allow a rental unit to be occupied unless the rental unit is properly and currently registered as required by this ~~section 7-38~~article.
- (aa) *Order to vacate.* No person shall occupy a rental unit if the building official or designee orders that it be vacated due to one (1) or more violations of this ~~Code~~article.
- (bb) *Termination of registration.* If the owner(s) of a rental unit fail to comply (or to force the occupant(s) of such rental unit to comply) with a notice received from the building official ~~or designee pursuant to Chapters 7 or 16 of the City's Code of Ordinances~~, or if the owner(s) or occupant(s) (as the case may be) of a rental unit fail to pay within thirty (30) days a billed and outstanding registration fee and/or inspection fee assessed pursuant to this ~~section 7-38~~article, the building official may suspend registration for such rental unit. In such event, the building official may post the rental unit and request the city's legal counsel to proceed at law to order the premises in violation to be vacated. Also in the event the building official suspends the registration for a rental unit, the building official shall notify the occupant(s) thereof that the occupant(s) may pay rent into a self-established escrow account until vacating the rental unit or until the registration of the rental unit is either reinstated or renewed. A terminated but not yet expired registration shall be reinstated for a rental unit once the requirements of the building official's notice ~~sent pursuant to Chapters 7 or 16 of the City's Code of Ordinance~~ are met and



all outstanding registration fees and inspection fees and late payment charges thereon have been paid in full.

- (cc) *Administrative liability.* No officer, agent, employee, contractor or member of the city council shall be personally liable for any damage that may accrue to any person as a result of any act, decision or other consequence or occurrence arising out of the discharge of his or her duties and responsibilities pursuant to this ~~Code~~article.
- (dd) *Savings clause.* This ~~section~~article shall not affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any cause of action acquired or existing, under any portion of the Code of Ordinances superseded by this ~~section~~article; neither shall any just or legal right or remedy be lost, impaired or affected by this ~~section~~article.
- (ee) *Enforcement.* The city council shall designate by resolution the person whose duty it shall be to administer and enforce the provisions of ~~the property maintenance code within the city. Any person found responsible for a violation of this article shall be subject to the penalties provided in section 1-14 of the City of Allegan Code of Ordinances~~this division within the city.

~~(Ord. No. 223, § 4, 7-14-86; Ord. No. 282, §§ 1-3, 1-27-92; Ord. No. 378, § 1, 9-26-05; Ord. No. 428, § 1, 7-9-12; Ord. No. 434, § 1, 4-22-13)~~

~~Secs. 7-39-7-255. Reserved.~~

#### ~~ARTICLE IV. WRECKING AND MOVING OF BUILDINGS~~<sup>[2]</sup>

~~Footnotes:~~

~~—(2)—~~

### ~~Cross-reference—Traffic~~Article III Property Maintenance

#### Division 1 – Blight

#### Sec. 7-11. Short title.

This division shall be known and may be designated as “The Blight Ordinance of the City of Allegan.”

#### Sec. 7-12. Definitions.

As used in this division, the following terms are defined below:

(a) *Blighted structure or building.* Any dwelling, garage, accessory or outbuilding, or any factory, shop, store, office building, warehouse, fence, or any other structure or part of a structure which:

(1) Because of fire, wind, other natural disaster, or physical deterioration, is no longer habitable as a dwelling or useful for the purpose for which it was originally intended;

(2) Is partially completed and which is not presently being constructed under an existing, valid building permit issued by or under the authority of the city;

(3) Is not structurally sound, weather-tight, waterproof or vermin-proof;

(4) Is not covered by a water resistant paint or other waterproof covering so as to protect said structure from the adverse effects of the elements or from physical deterioration;

(5) Causes or tends to cause devaluation of the subject property or other properties in the area; or

(6) Has any of the following conditions:

- (A) Peeling paint.
- (B) Sagging and deteriorating roof.
- (C) Missing and/or damaged siding.
- (D) Broken or deteriorating windows or doors.
- (E) Unfinished exterior.
- (F) Collapsing porch or deck.
- (G) Cracked and broken foundation/chimney.
- (H) Graffiti.

(7) Has veneer, cornices, belt courses, corbels, trim, wall facings or other similar decorative features not properly anchored or that are anchored with connections not capable of supporting nominal loads and resisting all load effects.

(b) Building material. Any lumber, bricks, concrete, cinder blocks, plumbing materials, electrical wiring or equipment, heating ducts or equipment, shingles, mortar, cement, nails, screws, or other materials commonly used in the construction or repair of any buildings or structures.

(c) Enforcement officer. The city manager, city building inspectors, community development coordinator, and any other individual that has been given enforcement duties by the city manager.

(d) Graffiti. Any mark or marks on any surface or structure made without the prior permission of the property owner and made in any manner, including but not limited to, writing, inscribing, drawing, tagging, sketching, spray-painting, painting, etching, scratching, carving, engraving, scraping, or attaching. Chalk marks on sidewalks are not graffiti.

~~(a)(c)~~ Inoperable Vehicle. Any motor vehicle which is inoperative for any reason such as being in a state of disassembly, disrepair, stripped, dismantled or which cannot be operated under its own power or cannot function as it was intended and designed to function legally on the roadway, but shall exclude vehicles generally, Ch. 28, in process at auto sales and dealership service facilities and auto engine and body repair shops which are to be repaired and made operable within ninety (90) days

**State Law reference**—~~Moving buildings or obstruction, MCL 247.188.~~

#### **~~DIVISION 1. — GENERALLY~~**

(g) Issuance of the notice. Any of the following events:

- (1) Mailing the notice to the responsible party's last known address by first class mail;
- (2) Personal delivery of the notice to the responsible party;
- (3) The responsible party's receipt of the notice by email, as indicated in a notification of receipt; or
- (4) The reading of the notice to the responsible party over the phone.

(h) Junk. Any abandoned, discarded, unusable objects or equipment, any object or equipment unused for its originally intended purpose, including, but not limited to, furniture, furniture intended for indoor use which is placed outdoors, stoves, refrigerators, freezers, cans, barrels, farm implements, parts of motor vehicles, machinery, cloth, rubber, bottles, any metals, boxes, cartons or crates.



(i) Responsible party. A person who violates any of the provisions of this division, whether as owner, occupant, lessee, agent, operator, servant, or employee, except as herein otherwise provided.

(j) Trash and rubbish. Any and all forms of debris not herein otherwise identified, except domestic refuse stored in appropriate containers prior to periodic collection for proper disposal and domestic refuse stored in appropriate containers for composting purposes. The term "trash, rubbish or refuse" shall also include any combustible and noncombustible waste material, including, but not limited to, animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food, leaves, brush, tree limbs, wood, lumber, grass or other yard waste.

~~Sec. 7-256. Work to be done in safe and workmanlike manner.~~

~~All wrecking and moving of buildings or~~ **13. Blighted structures or buildings prohibited.**

~~It shall be done in a safe, workmanlike manner. Failure to do so shall be cause~~**unlawful** for cancellation of the permit issued under this article.

~~(Ord. No. 150, § 1, 2-26-79)~~

~~any person to keep~~ **Sec. 7-257. Barriades or fences.**

~~(a) During the wrecking of~~**maintain any building**~~blighted or vacant structure, barriades shall be erected of a height and material which will protect the public and adjacent persons and property unless specifically waived by the building official, when the following conditions exist: building, dwelling, garage, outbuilding, factory, shop, store or warehouse in the city.~~

**Sec. (1)** ~~When wrecking any building or structure which is less than fifteen (15) feet from the property line;~~

~~(2) When wrecking any building or structure which exceeds one (1) story in height and is more than fifteen (15) feet from the front property line and debris from demolition could fall onto public property.~~

~~When wrecking one or two family structures, a barricade, such as a snow fence or equivalent, may be erected.~~

~~(b) Immediately after the removal of first floor construction, a substantial fence or barricade, subject to the approval of the building official;~~**7-14. Blighted exterior and maintenance requirement of property.**

~~It shall be erected completely around the basement or cellar, and~~**unlawful for any person to fail to improve and maintain all property under the person's control so as to comply with the following minimum requirements:**

~~(a) All exterior property areas shall be properly maintained until the filling and levelling in a clean and sanitary condition, free from debris, brush, severed tree limbs, junk, rubbish, physical hazards, rodent harborage and infestation.~~

~~(b) All stored firewood shall be in neat, orderly stacks, unless shielded from the ground level view from all adjoining properties.~~

~~(c) The storage and accumulation of any building material in a visible exterior area shall only be for a period that is reasonably necessary for the future use of such materials, which shall in no event be longer than 90 days. Building materials must be piled off~~**has been completed or new**~~the ground so as not to become a suitable environment for rats, rodents or similar vermin.~~

(d) In no case shall usable or unusable machinery, building materials, or other items be stored on a permanent basis in a truck trailer or other type of trailer, with or without its wheels, unless the trailer is enclosed.

(e) Scaffolding may remain on a building only for a period that is reasonably necessary for the completion of the construction started, or maintenance activities for which it is erected, which shall in no event be longer than 90 days or the length of the related building permit, whichever is longer.

(e) When a building (f) Conditions or structure is being moved, an adequate fence activities that produce disagreeable or barrierade, such as a snow fence obnoxious odors or equivalent stench or dense smoke, noxious fumes, gas, soot, or cinders in unreasonable qualities are prohibited.

(g) Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be erected completely around open basements or cellars, the same day maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

(h) Buildings shall have approved address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be not less than 4 inches (102 mm) in height with a minimum stroke width of 0.5 inch (12.7 mm).

~~Sec. 7-15.~~ or structure is moved off the foundation walls, and shall be maintained until the filling and leveling off  
**Enforcement and penalties.**

(a) Any person that violates this division shall be responsible for a municipal civil infraction. Each day that a violation continues shall be deemed to be a separate violation.

(b) Before commencing enforcement under this division, the enforcement officer shall issue notice to the responsible party charged with the violation, setting forth the violation specifics. The notice shall state the name of the person that the city considers to be the responsible party, and shall specify that failure to remedy the violation within no fewer than 10 days of the issuance of the notice may result in the issuance of a municipal civil infraction citation. The notice shall also state that the recipient has been completed or new the right to appeal the notice to the construction started board of appeals.

(Ord. No. 150, § 2, 2-26-79)

~~Sec.~~ (c) If the responsible party fails to abate the blight within the required time frame, the city may take action to abate the blight and may charge the cost of such abatement to the responsible party. The city treasurer shall bill the cost, plus an administration fee of 25 percent, to the responsible party. Such bills shall become due within 30 days of issuance, and it shall be a violation of this division to fail to pay a bill when due. The city may levy a single-lot special assessment in accordance with this Code of Ordinances as a means of recovering the full cost of abatement.

(d) Abating the nuisance is not in lieu of, or an alternative to, pursuing the civil infraction in district court. Both civil infraction and abatement of the nuisance may be pursued by the city.

**Sec. 7-258.** ~~Operation~~ **16. Appeal of trucks and machinery.**

~~Trucks and machinery used in connection with wrecking or moving operations under this article shall be operated in such a manner as not to create a traffic hazard and in accordance with any instructions or directions of the police chief and the building official.~~

~~(Ord. No. 150, § 3, 2-26-79)~~

**Sec. 7-259.** ~~Payment to city for blocked parking meters.~~

~~The person responsible for the wrecking or moving of any building or structure shall be required to pay the city treasurer for any and all parking meters blocked off during the wrecking or moving operations.~~

~~(Ord. No. 150, § 4, 2-26-79)~~

**Sec. 7-260.** ~~Replacement of damaged sidewalks.~~

~~Public sidewalks damaged by a building wrecker's or mover's equipment shall be promptly replaced at the wrecker's or mover's expense. Replacement sidewalks shall be constructed in accordance with sidewalk standards of the public works department.~~

~~(Ord. No. 150, § 5, 2-26-79)~~

**Cross reference** ~~Streets, sidewalks and other public places, Ch. 25.~~

**Sec. 7-261.** ~~Removal and disposal of materials during wrecking operations.~~

- ~~(a) Materials shall be removed and disposed of systematically, as the building or structure is wrecked, to prevent the creation of a fire hazard, danger to the public or interference with the use of public property.~~
- ~~(b) If rodents are discovered in quantity, the contractor shall arrange for an extermination process on the property before continuing the demolition.~~

~~(Ord. No. 150, § 6, 2-26-79)~~

**Cross reference** ~~Garbage and refuse generally, Ch. 12.~~

**Sec. 7-262.** ~~On-site sale of materials during wrecking operations.~~

~~Materials may be sold from the premises where a building is being wrecked only during the wrecking period. No materials shall be brought in for sale. Materials shall not be sold or stored on adjacent property or on the curb, lawn or other public property or property generally used by the public.~~

~~(Ord. No. 150, § 7, 2-26-79)~~

**Sec. 7-263.** ~~Lighting required when moved building left on streets at night.~~

~~If, in the moving of a building or structure, it becomes necessary to leave the building or structure on the streets or other public thoroughfares after sundown, the mover shall be responsible for providing the necessary lighting of the building or structure, and all equipment used in connection with the moving process, from sundown to sunrise, to protect the public.~~

~~(Ord. No. 150, § 8, 2-26-79)~~

~~Sec. 7-264. — Completion time for moving.~~

~~All moving of buildings or structures shall be fully completed within thirty (30) days from the date of the issuance of a permit under this article.~~

~~(Ord. No. 150, § 9, 2-26-79)~~

~~Sec. 7-265. — Completion time for wrecking.~~

- ~~(a) All work covered by a wrecking permit issued under this article shall be completed within thirty (30) days.~~
- ~~(b) The above time limits shall be extended for such time, not to exceed fourteen (14) days, as is expended by the permit holder in removing interior materials, without breaching the outer walls or roof or the security of the windows and doors. Further or other extensions of the above time limits shall not be granted, except under circumstances beyond the control of the permit holder. Further extensions will be considered only upon receipt of a written request by the permit holder listing the amount of additional time required, together with the specific circumstances which are beyond his control, which in his opinion justify the request. The written request shall be submitted to the building official no later than five (5) days prior to the expiration date of the permit.~~
- ~~(c) The building official shall review a written request for extension filed under subsection (b) and, if he considers the request justified, shall have the authority of approving an extension up to thirty (30) days. An extension of time exceeding thirty (30) days shall require the approval of the council.~~

~~(Ord. No. 150, § 10, 2-26-79)~~

~~Sec. 7-266. — Removal and disposal of debris; filling and levelling premises.~~

- ~~(a) The premises on which a building or structure is wrecked shall be cleared of all debris and filled and levelled within ten (10) days after the wrecking operation is completed, except where the excavation is needed or desired for new construction on the premises and a building permit therefor has been applied for or issued. The final six (6) inches of fill shall consist of clean soil, sand or gravel, free of large stones, block, brick, or concrete or other such unacceptable materials, and shall be left in a neatly graded condition. The ten-day period specified above may be extended by the building official, if inclement weather has prohibited the filling and levelling of the premises.~~
- ~~(b) The premises from which a building or structure is moved shall be cleaned of all debris, filled and levelled within seven (7) days, except where the excavation is needed or desired for new construction on the premises and a building permit therefor has been issued.~~
- ~~(c) There shall be no lath, wood or other organic matter used for fill in connection with the wrecking or moving of any building or structure.~~
- ~~(d) It shall be the obligation of the building wrecker or mover to provide or obtain suitable locations for the disposal of debris resulting from the wrecking or moving operation.~~

~~(Ord. No. 150, § 11, 2-26-79)~~

~~Sec. 7-267. — Basement floor slabs to be broken up.~~

~~All basement floor slabs which are not to be removed for new construction, when a building is wrecked or moved, shall be thoroughly broken up to permit drainage.~~

~~(Ord. No. 150, § 12, 2-26-79)~~

~~Sec. 7-268. — Burning on premises.~~

~~There shall be no burning on the premises where a building or structure is being wrecked or from which a building or structure is being moved, without first obtaining permission from the fire department. If~~

~~permission is obtained, all burning shall be done in strict accordance with the fire department regulations and only during daylight hours.~~

~~(Ord. No. 150, § 13, 2-26-79)~~

~~Sec. 7-269.—Variance.~~

~~The building official may grant variances to the provisions of this article in cases where there unusual difficulties or unnecessary hardships, provided such variances will not adversely affect the general health, safety or welfare.~~

~~(Ord. No. 150, § 14, 2-26-79)~~

~~Sec. 7-270.—Demolition by use of explosives.~~

~~Demolition of buildings by the use of explosives shall be permitted only when the fire chief and the police chief determine the same can be done without danger to the general public and persons and property adjacent to and near the site. Any person intending to demolish with explosives shall file with the city clerk a public liability policy acceptable to the building official insuring the applicant and the city as an additional insured against any liability imposed by law upon the applicant or the city arising out of the wrecking of any building or structure. Such policy shall provide minimum coverage as prescribed by resolution of the council. Such policy shall provide that it shall not be cancelled unless thirty (30) days' written notice is provided to the insured.~~

~~(Ord. No. 150, § 21, 2-26-79)~~

~~Secs. 7-271—7-285.—Reserved.~~

## ~~DIVISION 2.—PERMIT~~

~~Sec. 7-286.—Required; exception.~~

~~Before any person shall commence any wrecking or moving of a building or structure within the city, he shall obtain a permit therefor from the building official; provided, however, a wrecking permit shall not be required for minor work incidental to or in connection with the repair or alteration of a building or structure for which a building permit has been issued.~~

~~(Ord. No. 150, § 15, 2-26-79)~~

~~Sec. 7-287.—Application.~~

~~Application for a wrecking or moving permit shall be filed with the building official and shall contain the following information:~~

- ~~(1) The street number, property description, type of building or structure, type of construction, width, length and number of stories;~~
- ~~(2) The number of dwelling units within the structure, when totally or partially residential;~~
- ~~(3) The names of all owners of the premises;~~
- ~~(4) Written consent to the wrecking or moving by all owners;~~
- ~~(5) Utility notification information;**of violation.**~~

- (a) A person receiving a notification of violation under section 7-5 of this division may appeal to the City Manager or his/her designee by filing an appeal form with the city clerk no later than ten days after the issuance of the notice. The appeal must be submitted on a standard appeal application form available in on the city's website or in the office of the city clerk. The appeal application must

include a thorough description of the reason for appealing and shall be accompanied by any fee that may be required by the city council from time to time.

(b) The City Manager or his/her designee shall set a reasonable time for hearing of the appeal within 30 days from the date on which the application form is received. The construction board of appeals shall provide the appellant, by first class mail, one notice of the public hearing date, time, and location.

(c) The City Manager or his/her designee shall hear and decide appeals, and review on appeal any order, requirement, decision or determination, made by the enforcement officer in applying the requirements of this division. Upon such appeal, the City Manager or his/her designee may reverse or affirm the enforcement officer's determination in whole or in part.

**Sec. (6) — Completion date of the wrecking or moving;**

~~(7) A complete list of any and all substances stored or used on the premises which are, or may become, injurious to the public health or safety;~~

~~(8) A complete description of any barrels, tanks, vats or other containers and their location on the premises or underground. The description shall include a statement of the substances which are or were stored in the containers;~~

~~(9) Such other information as may be listed on the application and as the building official shall deem necessary.~~

~~(Ord. No. 150, § 16, 2-26-79)~~

**Sec. 7-288. — Fee.**

~~The fee for a wrecking permit shall be such as is prescribed by resolution of the council and shall be paid at the time the permit application is filed. Such fee shall be doubled if the wrecking is commenced before the permit is issued.~~

~~(Ord. No. 150, § 18, 2-26-79)~~

**Sec. 7-289. — Applicant's cash deposit or bond.**

~~Each application for a wrecking or moving permit, other than incident to a city demolition contract, shall be accompanied by a cash deposit, certified check or performance bond, acceptable to the city attorney, the proceeds of which may be used by the city to complete the wrecking and restore the site in the event the permittee should fail to do so within the period of the permit or an authorized extension thereof. Such deposit or bond shall be in the amounts as prescribed by resolution of the council. Each applicant shall show evidence of workers' compensation and liability insurance to free the city of liability incurred in the demolition.~~

~~(Ord. No. 150, § 17, 2-26-79)~~

**Sec. 7-290. — Inspection.**

~~Before a wrecking permit shall be issued under this division, an inspection of the premises shall be made by the building official and the fire chief. The inspection shall be conducted to determine whether any substance which is, or may become, injurious to the public health or safety is stored or used on the premises.~~

~~(Ord. No. 150, § 20, 2-26-79)~~

**Sec. 7-291. — Assignment or transfer prohibited.**

~~No permit issued under this division shall be assigned or transferred.~~

~~(Ord. No. 150, § 19, 2-26-79)~~

~~Sees. 7-292—7-305.—Reserved.~~

~~Article V-7-17. Interpretation.~~

~~Nothing in this division shall be interpreted to prohibit conduct or conditions expressly permitted under the city's zoning ordinance.~~

Division 2 - Dangerous Buildings-

~~Sec.~~ Sec. 7-30621. **Dangerous building and structures ordinance.**

This ordinance is specifically authorized by the housing law, 1917 PA 167, as amended, and shall be known and cited as the City of Allegan Dangerous Buildings Ordinance.

**Sec. 7-30722. Dangerous building unlawful.**

It shall be unlawful for any owner, agent, lessee or party in interest to keep or maintain any building or part thereof which is a dangerous building or structure as defined in this ordinance.

**Sec. 7-30823. Dangerous ~~buildings~~building defined.**

As used in this ordinance, the term "dangerous building" means any building or structure, residential or otherwise, which has any of the following defects or is in any of the following conditions:

- (a) A door, aisle, passageway, stairway, or other means of exit does not conform to the requirements of the city's fire code.
- (b) A portion of the building or structure is damaged by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause so that the structural strength or stability of the building or structure is significantly impaired and the structure does not meet the minimum requirements of the housing law or the Michigan Building Code for a new building or structure, purpose, or location.
- (c) A part of the building or structure is likely to fall, become detached or dislodged, or collapse and injure persons or damage property.
- (d) A portion of the building or structure has settled to an extent that walls or other structural portions of the building or structure have materially less resistance to wind than is required in the case of new construction by the housing law or the Michigan Building Code.
- (e) The building or structure, or a part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the  
  
support, or for other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fall or give way.
- (f) The building, structure, or a part of the building or structure is manifestly unsafe for the purpose for which it is used.
- (g) The building or structure is damaged by fire, wind, or flood, is dilapidated or deteriorated and becomes an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals, or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
- (h) A building or structure used or intended to be used for dwelling purposes, including the adjoining grounds, because of dilapidation, decay, damage, faulty construction or arrangement, or for other reason, is unsanitary or unfit for human habitation, is in a condition likely to cause sickness or disease, or is likely to injure the health, safety, or general welfare of people living in the dwelling.



- (i) A building or structure is vacant, dilapidated, and open at door or window, leaving the interior of the building exposed to the elements or accessible to entrance by trespassers.

**Sec. 7-~~309~~23. Notice of dangerous building.**

- (a) The ~~city~~city's building official may issue a notice pursuant to this section upon finding that a building or structure is a dangerous building. The notice shall be served on the owner, agent, or lessee registered with the city. If an owner, agent, or lessee is not registered with the city, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.
- (~~j~~b) The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained.
- (~~k~~c) The hearing officer shall be appointed by the mayor to serve at his or her pleasure. The hearing officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the city shall not be appointed as hearing officer. The city shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer.
- (~~d~~d) The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least 10 days before the date of the hearing included in the notice.

**Sec. 7-~~310~~24. Hearings and other proceedings.**

- (a) At the hearing, the hearing officer shall take testimony of the city, the owner of the property, and any interested party. Not more than 5 days after completion of the hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained.
- (~~m~~b) If the hearing officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall enter an order that specifies what action the owner, agent, or lessee shall take and sets a date by which the owner, agent, or lessee shall comply with the order. If the building is a dangerous building under the provisions of this ordinance, the order may require the owner or agent, to bring and maintain the exterior of the building and adjoining grounds into compliance including, but not limited to, the maintenance of lawns, trees, and shrubs.
- (~~n~~c) If the owner, agent, or lessee fails to appear or neglects or refuses to comply with the order issued under subsection (b), the hearing officer shall file a report of the findings and a copy of the order with the city's construction board of appeals not more than 5 days after the date for compliance set in the order and  
  
request that necessary action be taken to enforce the order. A copy of the findings and order of the hearing officer shall be served on the owner, agent, or lessee in the manner prescribed in Section 7-~~309~~23.
- (~~e~~d) The construction board of appeals shall set a date not less than 30 days after the hearing prescribed in subsection (a) for an appellate hearing on the findings and order of the hearing officer.

The construction board of appeals shall give notice to the owner, agent, or lessee in the manner prescribed in Section 7- ~~309~~23 of the time and place of the hearing. At the hearing, the owner, agent, or lessee shall be given the opportunity to show cause why the order should not be enforced. The construction board of appeals shall either approve, disapprove, or modify the order. If the construction board of appeals approves or modifies the order, the city shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or lessee shall comply with the order within 60 days after the date of the hearing under this subsection. For an order of demolition, if the construction board of appeals of the city determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent, or lessee shall comply with the order of demolition within 21 days after the date of the hearing under this subsection. If the estimated cost of repair exceeds the state equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires expedited demolition exists.

(~~pe~~) The cost of demolition includes, but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the county register of deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this ordinance. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure incurred by the city to bring the property into conformance with this ordinance shall be reimbursed to the city by the owner or party in interest in whose name the property appears.

(~~ef~~) The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within 30 days after mailing by the assessor of the notice of the amount of the cost, the city shall have a lien for the cost incurred by the city to bring the property into conformance with this ordinance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided for in this subsection does not have priority over previously filed or recorded liens and encumbrances. The lien for the cost shall be collected and treated in the same manner as provided for property tax liens under the general property tax act, 1893 PA 206, as amended.

(~~fg~~) In addition to the other remedies provided under this ordinance, the city may bring an action against the owner of a dangerous building or structure for the full cost of demolition, of making the building safe, or of maintaining the exterior or grounds adjoining a dangerous building or structure. The city shall have a lien on the property for the amount of a judgment obtained under this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over prior filed or recorded liens and encumbrances.

#### **Sec. 7-~~311~~25. Enforcement of judgment against other assets.**

(a) A judgment in an action brought pursuant to subsection 7-~~310~~24(g) may be enforced against assets of the owner other than the building or structure.

(b) The city shall have a lien for the amount of a judgment obtained pursuant to subsection 7-~~310~~24(g) against the owner's interest in all real property located in this state that is owned in whole or in part by the owner of the building or structure against whom the judgment is obtained. A lien provided

for in this section does not take effect until notice of the lien is filed or recorded as provided by law, and the lien does not have priority over prior filed or recorded liens or encumbrances.

**Sec. 7-~~312~~26. Penalties.**

- (a) A person who violates any provision of this dangerous building ordinance shall be responsible for a municipal civil infraction.
- (b) A person who fails or refuses to comply with an order approved or modified by the construction board of appeals ~~under 7-310 within the time prescribed by that section~~ is guilty of misdemeanor punishable by imprisonment for not more than 120 days or a fine of not more than \$1,000 or both.

**Sec. 7-~~313~~27. Appeal of circuit court.**

An owner or party in interest aggrieved by any final decision of the construction board of appeals may appeal the decision or order to the Allegan County Circuit Court by filing an appeal within 20 days from the date of such decision.

**Division 3 – International Property Maintenance Code**

**Sec. 7-31. Enforcement of the International Property Maintenance Code, 2015 Edition.**

- (a) Adoption of code. The International Property Maintenance Code, 2015 Edition, including Appendix A, as promulgated and published by the International Code Council, Inc., is adopted by reference as the Property Maintenance Code of the City of Allegan, and made a part of this chapter as if fully set forth in this article, subject to the modifications provided in this article and subject to such further modifications as the city shall adopt from time to time.
- (b) Definitions. Whenever the words "city," "jurisdiction" or "governmental unit" are used in the International Property Maintenance Code, 2015 Edition, they shall mean the City of Allegan. Whenever the word "state" is used in the International Property Maintenance Code, 2015 Edition, it shall mean the State of Michigan.
- (c) Amendments to the Property Maintenance Code. The International Property Maintenance Code, 2015 Edition, including Appendix A, is amended as follows:
  - (1) Section 101.1 is amended to read in its entirety as follows:

101.1. Title. These regulations shall be known and may be cited as the "Property Maintenance Code of the City of Allegan," and will be referred to in this article as this "Code."
  - (2) Section 102.3 is amended to read in its entirety as follows:

102.3. Application of other codes. Repairs, additions, or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code and the City of Allegan Fire Code. Nothing in this Code shall be construed to cancel, modify or set aside any provision of the City of Allegan Zoning Ordinance.
  - (3) Section 102.3.1 is added to read in its entirety:

102.3.1. Reference to other codes. Whenever the "International Building Code" or "building code" is referenced in this Code it shall mean the Michigan Building Code. Whenever the "International Mechanical Code" is referenced in this Code it shall mean the Michigan Mechanical Code. Whenever the "International Plumbing Code" is referenced in this Code it

shall mean the Michigan Plumbing Code. Whenever the "International Electrical Code" or "NFPA 70" is referenced in this Code it shall mean the Michigan Electrical Code. Whenever the "International Fire Code", "fire code" or "NFPA 25" is referenced in this Code it shall mean the City of Allegan Fire Code. Whenever the "International Zoning Code" is referenced in this Code it shall mean the City of Allegan Zoning Ordinance.

(4) Section 103.1 is amended to read in its entirety as follows:

103.1. General. Whenever the terms "code official" or "building official" are used in this Code it shall mean the designated building inspector of the city.

(5) Section 103.4 is amended to read in its entirety as follows:

103.4. Liability. The code official, member of the City of Allegan Construction Board of Appeals or city employee charged with the enforcement of this Code, while acting for the city, in good faith and without malice in the discharge of the duties required by this Code or other pertinent law or ordinance, shall not be rendered liable personally, and is relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this Code shall be defended by legal representative of the city until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this Code.

(6) Section 103.5 is amended to read in its entirety as follows:

103.5. Fees. The city council shall by resolution from time to time, establish a fee schedule for permits under this Code.

(7) Section 106.3 is amended to read in its entirety as follows:

106.3. Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed responsible for a municipal civil infraction, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this Code or of the order or direction made pursuant to this Code. Any action taken by the City of Allegan on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

(8) Section 106.4 is amended to read in its entirety as follows:

106.4. Violation penalties. Any violation of this Code shall be punishable as a municipal civil infraction as provided in and subject to the fines and penalties provided under Section 1-14 of the Code of Ordinances of the City of Allegan.

(9) Section 111.1 is amended to read in its entirety as follows:

111.1. Construction Board of Appeals. All appeals under this Code shall be brought before the City of Allegan Construction Board of Appeals which board is authorized and has jurisdiction to hear and decide appeals of orders, decisions, or determinations made by the code official relative to the application and interpretation of this Code, using the rules of procedures adopted by the Construction Board of Appeals.

(10) Section 111.2 is deleted in its entirety.

(11) Section 111.2.1 is deleted in its entirety.

(12) Section 111.2.2 is deleted in its entirety.

(13) Section 111.2.3 is deleted in its entirety.

(14) Section 111.2.4 is deleted in its entirety.

(15) Section 111.2.5 is deleted in its entirety.

(16) Section 111.3 is deleted in its entirety.

(17) Section 111.4 is deleted in its entirety.

(18) Section 111.4.1 is deleted in its entirety.

(19) Section 111.5 is deleted in its entirety.

(20) Section 111.6 is deleted in its entirety.

(21) Section 111.6.1 is deleted in its entirety.

(22) Section 111.6.2 is deleted in its entirety.

(23) Section 111.7 is deleted in its entirety.

(24) Section 111.8 is deleted in its entirety.

(25) Section 112.4 is amended to read in its entirety as follows:

112.4. Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be in violation of this Code.

(26) Section 201.3 is amended to read in its entirety as follows:

201.3. Terms defined in other codes. Where terms are not defined in this Code and are defined in the Michigan Building Code, the Michigan Residential Code, the Michigan Mechanical Code, the Michigan Plumbing Code, the Michigan Electrical Code, the City of Allegan Fire Code or the City of Allegan Zoning Ordinance, such terms shall have the meanings ascribed to them as stated in those codes or ordinances.

(27) Section 302.4 insert "eight (8) inches in height."

(28) Section 304.14 insert "May 1 to October 31."

(29) Section 602.2 is amended to read in its entirety as follows:

602.2. Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms based on the winter outdoor design temperature as provided within the Michigan Plumbing Code. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

(30) Section 602.3 is amended to read in its entirety as follows:

602.3. Heat supply. Every owner or operator of any building who rents, leases, or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish a heating system to the occupants thereof shall supply heat during the period from October 1 to May 1 to maintain a temperature of not less than 65 degrees F. (18 degrees C.) in all habitable rooms, bathrooms, and toilet rooms.

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the City of Allegan shall be 6 degrees F.

(31) Section 602.4 is amended to read in its entirety as follows:

602.4. Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 1 to maintain a temperature of not less than 65 degrees F during the period the spaces are occupied.

Exceptions: Processing, storage and operation areas that require cooling or special temperature conditions or areas in which persons are primarily engaged in vigorous physical activities.

(d) Copies of code. A complete copy of the International Property Maintenance Code, 2015 Edition, including Appendix A, is available for public use, inspection and purchase at the offices of the city clerk.

#### Division 4 – Grass and Noxious Weeds

##### Sec. 7-51. Definitions

These words and phrases shall have the following meanings when used in this division:

(a) Ground-cover vegetation means any of a variety of low-growing or trailing plants used to cover patches of ground.

(b) Issuance of the notice means posting of a notice on the property or personally serving notice on the responsible party.

(c) Noxious weeds means the following plants only: Canada thistle (Cirsium arvense), dodders (any species of Cuscuta), mustards (charlock, black mustard, and Indian mustard, species of Brassica or Sinapis), wild carrot (Daucus carota), bindweed (Convolvulus arvensis), perennial sowthistle (Sonchus arvensis), hoary alyssum (Berteroa incana), giant hogweed (Heracleum mantegazzianum), ragweed (Ambrosia elatior L.), and poison ivy (Rhus toxicodendron), and poison sumac (Toxicodendron vernix).

(d) Property owner means a person who holds record title to a parcel of real estate.

(e) Responsible party generally means the property owner, except that:

(1) A tenant or other person shall be a responsible party (in addition to the property owner) upon expressly assuming responsibility in a written contract with the property owner; and

(2) The manager of a business shall be a responsible party (in addition to the property owner) with respect to the property on which the business is situated. For purposes of this section, the term "manager" means the individual that exercises the most control over the day-to-day operations of the business on the property.

##### Sec. 7-52. Duty to remove noxious weeds and maintain grass.

The responsible party for each private property in the city shall be required to keep the property free from noxious weeds and ensure that grass and other ground-cover vegetation on the property does not grow in excess of eight (8) inches in height. The duties established under this section extend to the portions of the abutting public right-of-way that would become part of the property if the right-of-way were vacated. The responsible party shall have discretion in determining how to landscape and maintain the vegetation in the abutting right-of-way, so long as the landscaping and maintenance complies with



all applicable laws, regulations, and ordinances and so long as it does not overhang any sidewalk or other public way in a manner that will interfere or brush against any person using that public way and as long as it does not interfere with the clear vision of vehicle drivers or pedestrians entering and exiting the property.

**Sec. 7-53. Enforcement and abatement.**

- (a) Any person that violates this division shall be responsible for a municipal civil infraction. Each day that a violation continues shall be deemed to be a separate violation.
- (b) Before commencing enforcement under this division, the enforcement officer shall issue notice to the responsible party charged with the violation, setting forth the violation specifics. The notice shall state the name of the person that the city considers to be the responsible party, and shall specify that failure to remedy the violation may result in the issuance of a municipal civil infraction citation if such remedy is not complete within 48 hours after the issuance of the notice. The notice shall also state that the recipient has the right to appeal the notice to the City Manager.
- (c) If the responsible party fails to abate the blight within the required time frame, the city may take action to abate the violation and may charge the cost of such abatement to the responsible party. The city treasurer shall bill the cost, plus an administration fee of 25 percent, to the responsible party. Such bills shall become due within 30 days of issuance, and it shall be a violation of this division to fail to pay a bill when due. The city may levy a single-lot special assessment in accordance with this Code of Ordinances as a means of recovering the full cost of abatement.
- (d) Abating the nuisance is not in lieu of, or an alternative to, pursuing the civil infraction in district court. Both civil infraction and abatement of the nuisance may be pursued by the city.

Division 4 - Freestanding Outdoor Furnaces

**Sec. 7-61. Purpose.**

It is the purpose of this division to ban the construction and operation of outdoor furnaces within the limits of the City of Allegan for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the city and its inhabitants. The types of fuel used and the scale and duration of the burning by such furnaces create noxious and hazardous smoke, soot, fumes, odors, air pollution, particles, and other products of combustion that can be detrimental to citizens' health and can deprive neighboring residents of the enjoyment of their property or premises. Moreover, the restricted airflow, low operating temperatures, lack of emission controls, and large fuel loads associated with these units frequently result in excessive smoke. Under some conditions smoke can cause both acute and chronic health problems to other residents if they are exposed to the smoke.

**Sec. 7-62. Definition.**

The term "freestanding outdoor furnace" shall mean any device, appliance, equipment, apparatus, or structure that:

- (a) Is designed, intended and/or used to provide hot water heat and/or hot water to any associated structure.
- (b) Operates by burning wood or any other solid fuel including but not limited to: coal, paper pellets, and agricultural products.
- (c) Is not located within the structure to be heated.

**Sec. 7-63. Existing outdoor furnaces.**

- (a) Any outdoor furnace existing as of June 25, 2007, which was registered with the city within thirty (30) days of that date may continue in operation except as provided in this section.

- (b) If an existing outdoor furnace is not operated for twelve (12) consecutive months, it may not be used again and must be dismantled or otherwise be removed from the property.
- (c) No new or replacement of existing outdoor furnace shall be installed or put into use.
- (d) This section shall not be deemed as specific authorization for the use of any preexisting freestanding outdoor furnace designed for structure heat and shall not be deemed to bar, limit, or otherwise affect the rights of any person to take private or legal action regarding damage or nuisance caused by the use of a freestanding outdoor furnace designed for structure heat.

**Sec. 7-64. Installation and operation prohibited.**

- (a) Except as provided in Section 7-63, it shall be unlawful to install, maintain, or operate freestanding outdoor furnaces designed for structure heat and to cause or permit the installation or operation of freestanding outdoor furnaces within the city.
- (b) Nothing contained herein shall authorize any installation that is a public or private nuisance, regardless of compliance herewith.
- (c) This division shall not be a defense to any civil claims.
- (d) Any person who violates this section shall be responsible for a municipal civil infraction. Further, violations shall be deemed a nuisance per se.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS:

NAYS:

ABSTAIN:

ABSENT:

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023



The proposed amendment Chapter 8 of the City Code would:

1. Incorporate changes to cemetery regulations in Section 8-3 as recommended by an ad hoc cemetery committee after extensive discussion.
2. Add a new Section 8-7 to provide a process for reclaiming cemetery lots that have been abandoned by the owner. Specifically, for any lot purchased after the date of the amendment, the City could notify the owner after 40 years have passed without any request being made to bury someone in the lot. If the owner does not respond to the notice within 60 days, the lot is deemed abandoned and can be sold to a different individual. Ordinances of this type are very common in Michigan and are useful for ensuring that burial lots are not left unused. In the absence of such an ordinance, the statutory process for reclaiming cemetery lots must be used. See 1931 PA 46. It is more onerous and requires action by a circuit judge.

**CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND SECTION 8-3 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES, AND TO ADD A NEW SECTION 8-7, TO PROVIDE  
REGULATIONS FOR THE CITY'S CEMETERY**

The City of Allegan ordains:

Section 1. Amendment. Section 8-3 of the City of Allegan, Code of Ordinances, is hereby amended to read as follows:

**Article I  
General Regulations**

**Sec. 8-3. Rules and Regulations.**

- (a) The cemetery shall be open to the public from dawn to dusk.
- (b) Urns and containers should be no larger than twelve (12) inches (square or diameter) and must be placed to the side of the grave marker. No more than two (2) urns or containers per grave site is permitted.
- (c) All objects must be contained within a grave site and placed within eighteen (18) inches of the grave marker. The City reserves the right to regulate grave site decoration for beauty and safety. The City cannot store or save decorations removed from grave sites.
- (d) Flowers, plants, and shrubs may be planted in the ground and must be contained within the grave site. The City is not responsible for flowers and plantings that may prohibit grounds care activities.
- (e) The City reserves the right to remove trees; shrubs; flowers; and faded, disintegrated, or broken artificial flowers. The City has the right to trim, cut down, or remove any plantings that are in poor condition.
- (f) Pets must be kept to paved paths, must be leashed, and their waste picked up after. Failure to do so will result in a fine. Excessive fines will result in a ban from the cemetery.
- (g) Funerals are under the exclusive direction of the city cemetery management.

Section 2. Addition. A new section 8-7 is added to the City of Allegan, Code of Ordinances, to read as follows:

**Sec. 8-7. Reclamation of Vacant Cemetery Lots or Burial Spaces.**

- (a) Cemetery lots or burial spaces sold after the effective date of this ordinance and remaining vacant for 40 years or more from the date of their sale shall revert to the City upon the occurrence of the following events:
  - (1) Notice shall be sent by the City by first-class mail to the last known address of the last burial-rights holder of record informing him/her of the expiration of the 40-year period and that all rights with respect to said lots or spaces will be forfeited if he/she does not affirmatively indicate in writing to the City within 60 days from the date of mailing of such notice of his/her desire to retain such burial rights; and

(2) No written response to said notice indicating a desire to retain the cemetery lots or burial spaces in question is received by the City from the last burial-rights holder of record of said lots or spaces, or his/her heirs or legal representative, within 60 days from the date of mailing of said notice.

(b) Cemetery lots or burial spaces sold before the effective date of this ordinance may be reclaimed by the City pursuant to the statutory procedure in 1931 PA 46.

Section 3. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

### **CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

The proposed amendment would repeal Chapter 10, which pertains to elections, in its entirety. The Chapter is no longer needed because: (1) MCL 168.657 authorizes municipalities to establish election precinct boundaries by resolution rather than by ordinance; and (2) MCL 168.646a establishes the deadline for candidate nominating petitions. In conjunction with repealing Chapter 10, Council should also consider and adopt the proposed resolution to designate precinct boundaries, which includes the same boundaries currently outlined in Section 10-1.

In addition to repealing Chapter 10, the proposed amendment would renumber the following chapter (Chapter 10.5 – Emergency Management) to be Chapter 10. No changes to this chapter are needed, but Council should consider a resolution to appoint the Police Chief as the emergency management coordinator for the City. Chapter 10.5 contemplates the appointment of such a coordinator, but it is unclear whether one has ever previously been appointed.

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO REPEAL CHAPTER 10 OF THE CITY CODE AS NO LONGER  
NECESSARY DUE TO CHANGES IN THE MICHIGAN ELECTION LAW; AND TO  
RENUMBER CHAPTER 10.5 TO BE CHAPTER 10**

The City of Allegan ordains:

Section 1. Repealer. Chapter 10 of the City of Allegan, Code of Ordinances, entitled "Elections," is hereby repealed.

Section 2. Renumbering. Chapter 10.5 of the City of Allegan, Code of Ordinances, entitled "Emergency Management," is hereby renumbered to be Chapter 10.

Section 3. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

**CITY COUNCIL  
CITY OF ALLEGAN**  
Allegan County, Michigan

Council member \_\_\_\_\_, supported by Council member \_\_\_\_\_, moved the adoption of the following resolution.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPOINTING AN EMERGENCY MANAGEMENT COORDINATOR  
PURSUANT TO SECTION 9 OF THE EMERGENCY MANAGEMENT ACT**

WHEREAS, section 9 of the Emergency Management Act (the “EMA”), 1976 PA 390, as amended, MCL 30.401 *et seq.*, and Chapter 10 of the City Code authorize the City to appoint an emergency management coordinator.

WHEREAS, the City Council believes that the Police Chief is the most appropriate City official to perform this function.

Now, it is therefore resolved that:

1. The City Police Chief is hereby designated as the emergency management coordinator for the City of Allegan.
2. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

**RESOLUTION DECLARED ADOPTED.**

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

As its Clerk, I certify that this is a true and complete copy of a resolution adopted by the City Council of the City of Allegan, Allegan County, Michigan, at a regular meeting held on \_\_\_\_\_, 2023

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Michaela Kleehammer, City Clerk

**CITY COUNCIL  
CITY OF ALLEGAN**  
Allegan County, Michigan

Council member \_\_\_\_\_, supported by Council member \_\_\_\_\_, moved the adoption of the following resolution.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION TO ESTABLISH THE BOUNDARIES FOR TWO ELECTION  
PRECINCTS IN THE CITY OF ALLEGAN**

WHEREAS, the City of Allegan has historically consisted of two election precincts, the boundaries of which were set by section 10-1 of the City Code;

WHEREAS, MCL 168.657 now provides that election boundaries may be set by resolution rather than ordinance; and

WHEREAS, the City Council wishes to reestablish the existing boundaries through the adoption of this resolution.

NOW, THEREFORE, BE IT RESOLVED

A. The City shall be divided into two election precincts, the boundaries of which shall be as follow:

1. The southwest portion of the City of Allegan lying south and west of a line commencing at the west city limits line and Delano Street, thence east on Delano Street to Pine Street, thence south on Pine Street to Hubbard Street, thence east on Hubbard Street to Marshall Street, thence southeasterly along Marshall Street to the centerline of the Kalamazoo River, thence south along the centerline of the Kalamazoo River to the south city limits line.
2. The northeasterly portion of the City of Allegan lying north and east of a line commencing at the west city limits line and Delano Street, thence east on Delano Street to Pine Street, thence south on Pine Street to Hubbard Street, thence east on Hubbard Street to Marshall Street, thence southeasterly on Marshall Street to the centerline of the Kalamazoo River, thence south along the centerline of the Kalamazoo River to the south city limits line.

B. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

**RESOLUTION DECLARED ADOPTED.**

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

As its Clerk, I certify that this is a true and complete copy of a resolution adopted by the City Council of the City of Allegan, Allegan County, Michigan, at a regular meeting held on \_\_\_\_\_, 2023

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
Michaela Kleehammer, City Clerk

The proposed ordinance would amend Chapter 11, entitled "Fire Prevention," as follows:

1. Section 11-26, which pertains to the date on which trees must be removed from seasonal Christmas sales businesses, would be repealed. This section does not fit in this chapter. It is also unnecessary to include in the City Code at all because removal dates can be provided in the seasonal permits issued to these businesses.
2. Section 11-28, which generally prohibits depositing yard waste in City rights-of-way, would also be repealed. Staff anticipates that nearly identical language will be included in Chapter 12, which regulates garbage, because it fits better there.



**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO REPEAL SECTIONS 11-26 AND 11-28 OF THE CITY OF ALLEGAN, CODE OF ORDINANCES BECAUSE THOSE SECTIONS DO NOT DIRECTLY PERTAIN TO FIRE PREVENTION AND THEREFORE DO NOT BELONG IN CHAPTER 11 OF THE CODE**

The City of Allegan ordains:

Section 1. Repeal. Sections 11-26 and 11-28 of the City of Allegan, Code of Ordinances, are hereby repealed. The City Council hereby finds and determines that the date on which trees must be removed from a seasonal Christmas tree sales lot can be addressed through the transient merchant permit issued for such lots, and finds that regulations regarding the depositing of yard waste is best addressed in Chapter 12 – Garbage and Refuse.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

The proposed amendments to Chapter 12 of the City Code would:

1. Comprehensively re-write the City's regulations pertaining to garbage, which are currently unorganized and overly complicated. It would also, in a newly created "Article II," establish the Downtown Garbage Collection Program that the City has been working on for some time.
2. In the "General Provisions" in Article I:
  - a. Provide straightforward definitions for terms like "bulk item," "garbage," and "yard waste" that are used repeatedly in later parts of the ordinance to regulate the disposal of various types of items.
  - b. Prohibit the accumulation of garbage and other solid waste on premises within the City for more than 7 consecutive days.
  - c. Require that all property owners arrange for the appropriate storage and collection of garbage, except if exempt from that requirement due to participation in the downtown garbage collection program established in Article II.
  - d. For residential properties (*i.e.*, properties with fewer than 4 dwelling units) require the disposal of garbage in portable bins not exceeding 96 gallons, and require that such bins be stored in the side or rear yard and only placed at the curb after 8:00 a.m. on the day preceding collection (and further require removal from the curb by 8:00 p.m. on collection day).
  - e. For other properties, allow either portable bins or stationary dumpsters, subject to various regulations as to placement.
  - f. Provide that bulk items may be placed at the curb no more than 24 hours before their scheduled collection.
  - g. Prohibit disposing of waste in a hazardous manner.
3. In the "Downtown Garbage Collection Program" provisions in Article II:
  - a. Authorize the City to enter into a single-hauler contract for the disposal and collection of garbage generated on downtown. As part of the program, the City would place dumpsters and other disposal receptacles in various locations throughout the downtown program area.
  - b. Provide regulations for the use of the designated program receptacles, such as prohibiting the disposal of: (1) bulk items; (2) garbage generated outside the downtown; or (3) garbage deposited in violation of rules established by the City Manager.
  - c. Require that all property owners in the downtown program area are required to participate in the program and pay the applicable fees, but may still contract for private collection if they wish to do so. Further provide that the owners of certain properties located adjacent to the downtown program area may voluntarily "opt-in" and participate in the program if they wish to do so.

- d. Exempt property owners who participate in the program (whether voluntarily or mandatorily) from the general requirement to contract for private garbage disposal.
- e. Establish a fee system consisting of two components: (1) a uniform ready-to-serve fee; and (2) a variable usage fee that is based on the type of property use and the estimated amount of garbage generated.
- f. Provide a process by which property owners can obtain waivers from the payment of the usage fee if they sufficiently demonstrate that they have a suitable location on their own property to place a private dumpster that is shielded from public view and easily accessible by a private garbage collection service.

**CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND THE CHAPTER 12 OF THE CITY OF  
ALLEGAN, CODE OF ORDINANCES, TO UPDATE THE CITY'S  
REGULATIONS REGARDING GARBAGE AND OTHER SOLID WASTE**

The City of Allegan ordains:

Section 1. Renaming. Chapter 12 of the City of Allegan, Code of Ordinances, is hereby renamed "Garbage and Other Solid Waste."

Section 2. Amendment. Chapter 12 of the City of Allegan, Code of Ordinances, is hereby amended to read in its entirety as follows:

**Article I  
General Provisions**

**Section 12-1. Definitions.**

The following words 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:

- (a) *Bulk item* an item of garbage (e.g., a worn-out appliance or furniture item) that is over 60 pounds in weight or over 4 feet in length, width, or height.
- (b) *Garbage* means the items that people use or generate and then dispose of or recycle. Examples include product packaging, furniture, clothing, bottles, food scraps, newspapers, appliances, etc. Garbage does not include yard waste or downed trees or tree limbs.
- (c) *Neighborhood residential parcel* means a parcel containing a single-family dwelling, a two-family dwelling, or a multiple-family dwelling with no more than 4 dwelling units.
- (d) *Non-residential parcel* means any parcel other than a neighborhood residential parcel, including but not limited to a parcel containing a commercial use, industrial use, or multiple-family dwelling with more than 4 dwelling units.
- (e) *Yard waste* means items like leaves, grass clippings, vegetable or other garden debris, shrubbery or brush or tree trimmings.

**Section 12-2. Enforcement.**

The City Manager, in order to protect the public health and safety, is authorized to implement and enforce the provisions of this chapter and is hereby given control of the collection of garbage and other solid waste within the City. Further, the City Manager shall have the authority to make regulations concerning the collection of garbage and other solid waste as the City Manager finds necessary; provided, that such regulations are not contrary to the provisions of this chapter. Any person who violates any such regulation or any provision of this chapter shall be responsible for a municipal civil infraction.

### Section 12-3. Regulations.

- (a) *Accumulation on premises.* It shall be unlawful to allow garbage, yard waste, downed trees or tree limbs, or any other solid waste to accumulate on a premises within the City for more than 7 days.
- (b) *Providing for collection.* The owner, occupant, and/or any other person who manages or is otherwise in control of any premises within the City shall provide for the collection and disposal of garbage and other solid waste as necessary to avoid a violation of subsection (a) above.
- (c) *Neighborhood residential regulations.* The following regulations apply to neighborhood residential parcels:
  - (1) Garbage shall be stored in a portable watertight and vermin-proof receptacle of substantial construction with handles and a tight-fitting cover. Receptacles must have a capacity of at least ten gallons but not more than 96 gallons.
  - (2) Dumpsters and other receptacles exceeding 96 gallons are prohibited on neighborhood residential premises except when necessary to dispose of construction debris from work being performed on the premises pursuant to a valid building permit.
  - (3) Garbage receptacles shall generally be stored in an appropriate location in the side or rear yard of the property, except as provided in subsection (4) below. Receptacles shall not be stored in the front yard.
  - (4) Garbage receptacles may be set out for collection in the right-of-way after 8:00 a.m. on the day preceding collection. After such receptacles are emptied, they shall, on the same day collections are made, be removed from the street right-of-way no later than 8:00 p.m.
- (d) *Non-residential regulations.* The following regulations apply to non-residential parcels:
  - (1) Non-residential parcels must be equipped with a sufficient receptacle or receptacles to accommodate the garbage generated on-site.
  - (2) Such receptacles shall be stored on the premises they serve and shall be at least twenty-five (25) feet from the road, behind a primary or accessory structure, or reasonably enclosed within a opaque fence or barrier.
  - (3) Where portable receptacles are used, such receptacles may set out for collection in the right-of-way after 8:00 a.m. on the day preceding collection. After such receptacles are emptied, they shall, on the same day collections are made, be removed from the street right-of-way no later than 8:00 p.m.
- (e) *Yard waste and bulk items.* To the extent a premise is served by a provider that offers bulk item or yard waste collection, such items may be set out for collection in the right-of-way for no more than 24 hours. No person shall deposit yard waste or bulk items in the public rights-of-way, or upon the traveled portion of any public street, alley or sidewalk, or within any public place, except as permitted by this subsection.
- (f) *Prohibited waste disposal.* It shall be unlawful for any person to place any material in a receptacle which might endanger the collection personnel, or to deposit or deliver to a disposal site any hazardous material or waste material which would be detrimental to the

normal operation of collection, incineration, recycling or disposal, such as gaseous, solid or liquid poison, dead animals, ammunition, explosives, flammable liquid, undrained garbage of a liquid or semi-liquid nature, whether in containers or not, concrete, dirt, automobile or equipment parts, or any material that possesses heat sufficient to ignite any other collected materials.

## **Article II**

### **Downtown Garbage Collection Program**

#### **Section 12-11. Definitions.**

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them unless the context clearly indicates otherwise. Further, all words and phrases defined in other articles within this chapter shall have the same meaning when used in this article:

- (a) *Designated downtown collector* means a person or entity awarded a contract by the City to engage in the business of collecting garbage from designated downtown receptacles pursuant to the designated downtown collector contract.
- (b) *Designated downtown collector contract* means an agreement between the City and a garbage collector to serve as the designated downtown collector.
- (c) *Designated downtown receptacle* means a garbage receptacle owned or under the control of the City that may be used for the disposal and collection of garbage originating from any downtown generation site.
- (d) *Downtown generation site* means any parcel located in the downtown program area or any parcel that opts into the downtown garbage collection program pursuant to section 12-12(b)(2) below.
- (e) *Downtown program area* means the area between Cutler Street on the north, Chestnut Street on the west, Kalamazoo River and Second and State Streets on the south, and Kalamazoo River on the east.

#### **Section 12-12. Participation, Services, and Prohibited Uses of Downtown Receptacles.**

- (a) *Program services.* Commencing on the date set forth in the designated downtown collector contract, the City shall provide for the routine collection and disposal of garbage originating from downtown generation sites pursuant to the terms and conditions of such contract.
- (b) *Program participation.*
  - (1) *Mandatory participation.* The owners of all parcels within the downtown program area shall participate in the downtown garbage collection program by complying with the provisions of this article and any applicable terms of the designated downtown collector ordinance. No owner may opt out of the program. However, the owner of a downtown generation site may apply for a waiver of the program usage fee subject to the standards and procedures provided in section 12-13(b).
  - (2) *Voluntary participation.* The owner of any parcel on Hubbard or Trowbridge Street within one block of the downtown program area, that is smaller than .5 acres or is owned by the City of Allegan or Allegan District Library that wishes to participate in the program may opt in by filing a written application with the city clerk, on a form available in the city clerk's office. Opt-in participants may withdraw from the program at any time by submitting written notice to the city clerk.

- (c) *Program benefits.* Notwithstanding any other provision of this chapter, a property owner's participation in the downtown garbage collection program shall satisfy any obligation the owner would otherwise have to provide for on-premise garbage storage and collection.
- (d) *Non-Exclusivity.* The provisions of this article shall not prohibit property owners in the downtown program area from obtaining garbage collection services from persons or companies other than the designated downtown collector. However, the procurement of any such additional services shall not excuse the property owner from participation in the program or from the payment of any applicable fees imposed thereunder, except as provided in 12-13(b).
- (e) *Restrictions on use of designated downtown receptacles.* It shall be unlawful to do any of the following:
  - (1) Deposit a bulk item in a designated downtown receptacle.
  - (2) Deposit garbage, bulk items, or any other solid waste that was generated outside the downtown program area (or outside of an otherwise participating parcel) into a designated downtown receptacle.
  - (3) Deposit an item into a designated downtown receptacle in violation of rules promulgated by the City Manager pursuant to this chapter.

### **Section 12-13. Program Fees.**

- (a) *Fees established by resolution.* Each program participant shall pay applicable fees as established by resolution of the City Council from time to time, which shall consist of two components:
  - (1) *Ready-to-serve fee.* A fee covering the fixed costs of the downtown garbage collection program including administration costs, the costs of obtaining and maintaining the designated downtown receptacles, program design and implementation costs, etc.
  - (2) *Usage fee.* A fee designed to be proportionate to the average garbage disposal needs of each participating parcel based on the use of such parcel. The resolution establishing program fees shall delineate different fee amounts for various types of land uses.
- (b) *Waiver of usage fees.* The owner of a downtown generation site may apply for a waiver of the usage fee (but not the ready-to-serve fee) by submitting a written application to the city clerk on a form available in the city clerk's office. The city manager shall review such applications and shall grant a requested waiver upon finding that:
  - (1) The applicant's parcel is non-residential parcel as described above;
  - (2) The applicant's parcel has a suitable location for the placement of a private garbage disposal receptacle of sufficient size to accommodate the amount of garbage likely to be generated on-site. The location must be screened from view from pedestrians on the public street and must be readily accessible by a private garbage collection service, without the need to relocate the receptacle for purposes of collection; and
  - (3) The applicant has arranged for, or is proposing to arrange for, a private garbage disposal service that will collect garbage from the receptacle at regular and appropriate intervals.
- (c) *Billing.* Program fees shall be billed by the City's utility billing department through its usual billing procedures. All bills for solid waste collection and disposal services must be paid within thirty days from the date of the bill. Any bill not so paid on a timely basis will be subject to the addition of a penalty of one and one-half percent per month of the total amount payable.

(d) *Delinquent charges as single-lot special assessments.* If any account remains delinquent for more than 30 days, the City may levy a single-lot special assessment for the amounts owed pursuant to Chapter 27, Article II, Division 3 of the City Code.

Section 3. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

### CERTIFICATION

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
, Mayor

\_\_\_\_\_  
, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023



The proposed ordinance would repeal Chapter 14, which pertains to mobile homes. There are two reasons for this. First, mobile homes are now largely regulated by the Mobile Homes Commission Act, Public Act 96 of 1987. Chapter 14 predates Act 96 and as a result does not fit well with it. Moreover, the regulations in Chapter 14 pertaining to the dimensions and layouts of mobile homes are duplicative of (and sometimes in conflict with) the dimensional standards for dwelling units provided in Section 1616. Because these regulations relate to land use, they are more appropriately contained in the zoning ordinance than in the regulatory Code.

**CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO REPEAL CHAPTER 14 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES**

Section 1. Repealer. Chapter 14 of the City of Allegan, Code of Ordinances, entitled “Mobile Homes and Trailers,” is hereby repealed because the regulations it contains are outdated and duplicative of the regulations in Section 1616 of the City’s Zoning Ordinance.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_  
NAYS: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
, Mayor

\_\_\_\_\_  
, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023

The proposed amendments to Chapter 15 of the City Code would:

1. Comprehensively re-write the City's regulations pertaining to noise, which are currently disorganized and some of which are arguably unenforceable in light of current case law. *See People v. Gasper*, 314 Mich App 528; 888 NW2d 116 (2016) (finding that noise ordinance that prohibited "destroying the peace and tranquility of the surrounding neighborhood" was unconstitutionally vague).
2. Establish a general prohibition on making a "noise disturbance," which is defined to include any sound that unreasonably disturbs a person of normal sensitivities that can be heard distinctly and discretely above the ambient sound in the surrounding area. This legal standard has been upheld by Michigan courts and is used in ordinances throughout the state.
3. Define more specific prohibitions, many of which are similar to various provisions in the City's existing ordinance. The specific activities that are prohibited include:
  - a. Loud speech or screaming that can be heard at varying distances, depending on the time of day (50 feet before 10 p.m and 25 feet after p.m.).
  - b. The playing of radios, televisions, musical instruments, or similar devices that can be heard at varying distances, depending on the time of day (50 feet before 10 p.m and 25 feet after p.m.).
  - c. The operation of heavy equipment after 10 p.m. within 600 feet of a residential area.
  - d. The loading and unloading of crates, and containers after 11 p.m. if audible within 50 feet.
  - e. The sounding of non-emergency signaling devices, except during daytime hours not more than once per hour to signify the time of day (e.g., church bells).
4. Establish exceptions to the general prohibitions, many of which are similar to exceptions in the current ordinance. Exceptions include:
  - a. Emergency alerts.
  - b. Lawn maintenance and snow removal during specified hours.
  - c. Operation of government and hospital equipment.
  - d. Noises emanating from community-events or events held at the Allegan County Fairgrounds.
5. Establish a variance process whereby staff can grant permission to produce noise at otherwise prohibited levels where those levels would impose an unreasonable hardship on the applicant. The process provides an opportunity for notice and comment by neighbors located within 100 feet of the applicant's property. It also provides for the imposition of conditions, such as limiting the duration of the variance to a specified time period.

6. Provide that the ordinance is to be administered by the police department or other designated code officials.
7. Provide that decibel readings may be taken as additional evidence demonstrating a noise disturbance, but that particular decibel readings are not required for enforcement. Rather, in most cases, enforcement would be done by pacing off at least 25 feet or 50 feet from the site of the noise (depending on the type of noise and time of day) and determining whether the noise is plainly audible. This is a common enforcement practice in many communities.

**CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND CHAPTER 15 OF THE CITY OF ALLEGAN,  
CODE OF ORDINANCES, TO REGULATE NOISE**

The City of Allegan Ordains:

Section 1. Amendment. Chapter 15 of the City of Allegan, Code of Ordinances, is hereby amended to read in its entirety as follows:

**Sec. 15-1. Findings and Purpose.**

The City of Allegan determines that excessive noise, sound and vibration constitute a hazard to the public health and welfare. Excessive noise also adversely affects the comfort and repose of persons in the community, adversely affects the quality of life, and adversely affects the desirability of the community as a place to live, work or recreate. The purpose of this article is to provide regulations to restrict and abate certain loud, unnecessary, unnatural or unusual noises and other disturbances.

**Sec. 15-2. Noise Disturbances Prohibited.**

- (a) *General Noise Disturbances*. No person shall make, cause to be made, or allow to be made from a premises under such person's control, any sound that unreasonably disturbs a person of normal sensitivities or unreasonably interferes with the peaceful enjoyment of the premises of another, where such sound:
  - (1) Can be heard due to the volume or intensity of the sound; and
  - (2) Can be heard distinctly and discretely above the ambient sound of the surrounding area
- (b) *Loud Speech or Screaming After Hours*. No person shall make any noise by human speech so as to be plainly audible, for a period of at least 5 minutes, at a distance of 25 feet in any direction between the hours of 10 p.m. and 7 a.m., as measured from the property line if the sound emanates from private property, or as measured from the source of the sound in other circumstances.
- (b) *Radios, Televisions, Musical Instruments, and Similar Devices*. No person shall operate or play, or permit the operation or playing of, any radio, television, phonograph, drum, musical instrument, stereo (including vehicle stereos), loudspeaker, or similar device which emits sound other than the speech of the operator in such a manner as to:
  - (1) Be plainly audible at a distance of 25 feet in any direction between the hours of 10 p.m. and 7 a.m., as measured from the property line if the sound emanates from private property, or as measured from the source of the sound in other circumstances; or
  - (2) Be plainly audible at a distance of 50 feet in any direction between the hours of 7 a.m. and 10 p.m., as measured from the property line if the sound emanates from private property, or as measured from the source of the sound in other circumstances.
- (c) *Heavy Equipment*. Except for work on essential services, no person shall use any pile driver, shovel, hammer, derrick, hoist, tractor, roller or other construction apparatus between 10:00 p.m. and 7:00 a.m. of the following day, within 600 feet of a residential area.
- (d) *Loading and Unloading*. No person shall load, unload, open, close or otherwise handle boxes, crates, containers, building materials, garbage trucks, garbage cans or similar objects between 11:00 p.m. and 6:00 a.m. of the following day in such a manner as to be plainly audible at a

distance of 50 feet in any direction, as measured from the property line if the sound emanates from private property, or as measured from the source of the sound in other circumstances.

- (e) *Stationary Non-emergency Signaling Devices.* No person shall permit the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle or similar device for nonemergency purposes. The sounding of bells or chimes to signify the time of day (between 7:00 a.m. and 9:00 p.m.) shall be exempt from this subsection, so long as the sounding occurs consistently at scheduled intervals not more than once per hour.

### **Sec. 15-3. Exceptions.**

- (a) *Emergencies.* This article shall not apply to creating sound for the purpose of alerting persons to the existence of an emergency or to creating sound in the performance of emergency work.
- (b) *Lawn Maintenance Equipment.* The use of customary lawn maintenance equipment (such as lawn mowers, leaf blowers, and chain saws), if in good working order, on residential property between the hours of 8:00 a.m. and 9:00 p.m. shall not constitute a violation of this article.
- (c) *Residential Snow Removal.* The use of snow blowers, if in good working order, on residential property shall not constitute a violation of this article when:
  - (1) The use occurs between the hours of 6:00 a.m. and 9:00 p.m.; or
  - (2) The use occurs at any time of day or night, when there has been more than 6 inches of snowfall within the last 24 hours.
- (d) *Commercial Snow Removal.* Snow removal from commercial or industrial property by any internal combustion device is permitted at all times if the snow removal equipment has a properly functioning muffler. However, commercial or industrial property within 600 feet of a residence shall not have snow removal undertaken by commercial equipment in excess of 15,000GVW between the hours of 9:00 p.m. and 6:00 a.m. the following day, unless:
  - (1) Permission is granted by the occupant of that residence;
  - (2) The establishment opens for business at or before 7:00 a.m.; or
  - (3) There has been more than 6 inches of snowfall within the last 12 hours.
- (e) *Municipal, School District and Hospital Equipment.* This article shall not apply to sound made by municipal street and sidewalk maintenance equipment or snow removal equipment used by the city, the county, a school district, a hospital or their agents.
- (f) *Community-Wide Events.* This article shall not apply to sounds produced at community-wide events hosted by the city or a school (such as parades, festivals, or outdoor sporting events), or to sound produced as part of events held at the Allegan County Fairgrounds.

### **Sec. 15-4. Variances.**

- (a) *Application process.* Any person seeking a variance from the requirements of this chapter may file an application with the city clerk. The application shall contain information which demonstrates that bringing the source of sound or activity for which the variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. Upon receiving such application, the city clerk shall post a notice of the application at city hall and on the city's website and shall mail written notice to all property owners owning land within 100 feet of the boundaries of the subject parcel. Any individual who claims to be adversely affected by the allowance of the variance may file a statement to that effect with the city clerk, containing any information to support his or her claim.

- (b) *Consideration by city manager.* The city manager shall consider variance applications after allowing reasonable time for the filing of public comments, and in doing so shall balance the interests of the applicant, the community, and other persons of not granting the variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected and any other adverse impacts of granting the variance. Applicants for a variance and persons contesting the variance may be required to submit any information that the city manager may reasonably require.
- (c) *Form of decision.* In granting or denying an application, the city manager shall place on public file a copy of the decision and the reasons for denying or granting the variance. If the variance is granted, the city manager shall provide a notice to the applicant containing all necessary conditions, including the time limit on the permitted activity. The variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the variance shall terminate it and subject the person holding it to the provisions of this chapter regulating the source of sound or activity for which the variance was granted.
- (d) *Appeals.* Any person aggrieved by a variance decision under may appeal that decision to the city council at any time by filing a notice of appeal with the city clerk. Upon the filing of a notice of appeal, the city council shall set a public hearing for the appeal within 30 days from the date on which the notice is received. The city council shall provide the appellant, by first class mail, one notice of the public hearing date, time, and location. The city council may reverse, affirm, or modify the city manager's determination in whole or in part, applying the same standards of review as provided in subsection (b).

#### **Sec. 15-5. Enforcement.**

- (a) This chapter shall be administered and enforced by the chief of police of the city, who shall have the authority to delegate the responsibility to enforce this article to the city's law and code enforcement officers.
- (b) The administration and enforcement of noise control shall be controlled by the following standards:
  - (1) Detection of a noise disturbance shall be by means of the law enforcement officers' and other properly delegated enforcement officials' ordinary auditory senses of hearing not enhanced by any electronic or mechanical device. Decibel readings may be taken as additional evidence demonstrating a noise disturbance.
  - (2) An enforcing officer or other witness need not determine the particular words or phrases being produced or the name of any song or artist producing the sound.
  - (3) The detection of any rhythmic base or reverberating type of sound is sufficient to constitute a plainly audible sound which may constitute a noise disturbance.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
, Mayor

\_\_\_\_\_  
, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023  
Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023



The proposed amendments to Chapter 15 of the City Code would:

1. Rename the parks commission to the public spaces commission, consistent with prior council resolutions to that effect.
2. Provide for staggered appointments to the public spaces commission with 1 member being a member of the city council, one member being a member of the DDA, and 7 members being registered electors. A template appointment resolution has also been provided for council's consideration.
3. Authorize the city council to remove members of the public spaces commission without receiving a recommendation from the commission urging the council to do so.
4. Allow alcoholic liquor in city parks when sold pursuant to a special liquor license issued by the Michigan Liquor Control Commission with the approval of the city council.
5. Provide that vandalism and the setting of unlawful fires are misdemeanor offenses, rather than municipal civil infractions.
6. Authorize the use of portable grills not greater than 36 inches in width or length in city parks and authorize the city manager to grant special temporary permits for the setting of otherwise unlawful fires or the use of otherwise unlawful cooking equipment in city parks (e.g., smokers for pig roasts in connection with large events).
7. Authorize the city council to modify the operating hours of city parks by resolution.
8. Extend the maximum length of after-hour park parking permits from 24 hours to 72 hours.

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND CHAPTER 18 OF THE CITY CODE TO PROVIDE  
FOR THE ADMINISTRATION OF THE CITY'S PARKS AND RECREATION  
FACILITIES**

The City of Allegan ordains:

Section 1. Amendment. Chapter 18 of the City of Allegan, Code of Ordinances, is hereby amended to read in its entirety as follows:

**ARTICLE I**  
**PUBLIC SPACES COMMISSION**

**Sec. 18-1. Public Spaces Commission Established.**

The City shall have a public spaces commission with the powers, duties, and responsibilities set forth in this chapter.

**Sec. 18-2. Purpose.**

- (a) The public spaces commission shall advise and make recommendations to the city council on the city parks system's management, operation, and use. Such responsibilities shall include:
  - (1) Preparation, recommendation to the city council for adoption, and continual evaluation of a master plan for development of the city park system.
  - (2) Annually reviewing and commenting on a budget prepared by the City Manager covering the acquisition, development, maintenance and operation of the city park system.
  - (3) Recommending to the city council capital improvement projects and grants for the city park system.
  - (4) Recommending to the city council policies, rules, and regulations related to the use, operation, and maintenance of the city park system.
  - (5) Preparing an annual report to the city council on the management, operation, and use of the city park system.
- (b) When undertaking its responsibilities, the commission shall recognize that coordinated recreation efforts are needed to provide recreation programs and facilities for all citizens. The commission shall cooperate with community service organizations in providing recreation programs.

**Sec. 18-3. Composition.**

- (a) As of the effective date of the ordinance that last amended this section, the public spaces commission shall consist of the 9 members that were previously appointed to the city's parks commission, which was the predecessor entity established by prior versions of this article and renamed by resolution of the city council. Notwithstanding any prior ordinance or resolution to the contrary, the terms of all 9 of those members shall expire on December 31, 2023.
- (b) No later than December 31, 2023, the city council shall appoint or reappoint a public spaces commission that consists of 9 members and shall, as of January 1, 2024, be constituted as follows:

- (1) One member of the city council serving for a term of 1 year, or until such member is no longer a member of the city council, whichever comes first;
  - (2) One member of the downtown development authority board serving for a term of 1 year, or until such member is no longer a member of the downtown development authority board, whichever comes first.
  - (3) Two registered electors serving for terms of 1 year.
  - (4) Two registered electors serving for terms of 2 years.
  - (5) Three registered electors serving for terms of 3 years.
- (b) All voting members shall be appointed by the mayor and confirmed by a majority of the members elected and serving on the city council.
- (c) After the initial appointments provided for in section (b) above, the 7 members of the public spaces commission who are eligible solely because of their status as registered electors shall be appointed to 3-year terms.
- (d) If a commission member's term has expired, and a successor has not been appointed, the commission members shall continue to serve until a successor is appointed.

**Sec. 18-4. Vacancies.**

Vacancies on the public spaces commission shall be filled in the same manner as initial appointments for the remainder of the unexpired term of the appointment vacated.

**Sec. 18-5. Removal from office.**

Commission members serve at the pleasure of the city council and may be removed by the city council at any time for cause.

**Sec. 18-6. Compensation.**

Members of the public spaces commission shall receive no compensation but shall be entitled to their actual and necessary expenses incurred in the performance of their duties with prior approval from the City Manager. This provision does not apply to the legal consumption of alcoholic liquor, beer, wine or spirits in a commons area of a social district established by the city council in compliance with MCL Section 436.1551, or to such beverages sold pursuant to a special liquor licenses issued by the Michigan Liquor Control Commission with the approval of the city council.

**Sec. 18-7. Meetings.**

All meetings of the public spaces commission, except as otherwise permitted by law, shall be open to the public and held in compliance with Act No. 267 of the Public Acts of Michigan of 1976 as amended, and as may be amended. Regular meetings of the commission shall be scheduled at regular intervals by resolution and special meetings may be called by the commission chairperson or any two (2) of its members.

**Sec. 18-8. Quorum.**

A majority of the members of the public spaces commission shall constitute a quorum for conducting the business of the commission.

**Sec. 18-9. Chairperson.**

The members of the public spaces commission shall, in January of each year, elect one (1) of its members as chairperson. The chairperson shall be responsible for conducting all meetings of the

commission. Another member of the commission, selected by commission members present, may serve as temporary chairperson for a meeting from which the chairperson is absent.

**Sec. 18-10. Execution of contracts and commitment of funds.**

The public spaces commission may advise and make recommendations to the city council regarding the entering into of contracts or the expenditure of city funds in connection with the city park system, but may not itself enter into contracts or commit city funds.

ARTICLE II  
RULES AND REGULATIONS

**Sec. 18-21. Possession of alcoholic liquor.**

It shall be unlawful for any person to possess any alcoholic liquor in a container which is open, uncapped or upon which the seal is broken, or consume any alcoholic liquor in any parks owned or operated by the city; provided, however, that the alcoholic liquor may be sold, possessed and consumed in the public parks during the period of a special license with a specific approval of the council and in conformance with the conditions of such approval and condition of a special license granted by the state liquor control commission.

**Sec. 18-22. Littering.**

- (a) It shall be unlawful for any person to litter in a public park.
- (b) It shall be unlawful for any person to place or deposit any garbage, glass, tin cans, papers or miscellaneous waste in any park or playground except in containers provided for that purpose.

**Sec. 18-23. Vandalism.**

It shall be unlawful for any person to commit an act of vandalism in any city park. Vandalism means the intentional destruction, damage or defacement of any public or private property, real or personal, without the consent of the owner or person having lawful custody of the property. The offense shall include, but not be limited to actions taken by cutting, tearing, breaking, marking, painting or drawing when such actions have the effect of destroying, damaging or defacing the property. A violation of this section shall be a misdemeanor offense.

**Sec. 18-24. Building fires.**

It shall be unlawful for any person to kindle or build a fire in any park or playground except in fireplaces or stoves in any park provided for that purpose, or in portable grills or outdoor cooking devices not exceeding 36 inches in either width or length. Upon leaving such fire it shall be the duty of the person last using it to see that the fire is extinguished and that any charcoal used in setting the fire is properly disposed of. Notwithstanding the forgoing, the City Manager is authorized to issue temporary permits for the setting of other fires and use of other cooking devices for special events (*e.g.*, an annual community pig roast) upon determining that doing so will not endanger the public, and that the benefits to the public outweigh any such risk or other public detriments. A violation of this section shall be a misdemeanor offense.

**Sec. 18-25. Use of motor vehicles.**

It shall be unlawful for any person to drive or park any motor vehicle in any park or playground except in spaces set aside and designated as parking areas. Driving and parking on all streets and public ways within any park or bordering on the same shall be subject to the provisions of the Uniform Traffic Code.

**Sec. 18-26. Hours.**

Public parks shall be open from dawn to dusk, or as otherwise provided by resolution of the city council. It shall be unlawful for any person to enter upon or remain in a park other than during times when the same are open, unless given permission by the city manager.

**Sec. 18-27. Overnight parking.**

Overnight parking in parks is hereby forbidden except that a person may apply to the city manager for permission to remain in a park overnight, and such permit shall be in writing issued by the city manager and shall not exceed seventy-two (72) hours.

**Sec. 18-28. Rules and regulations.**

- (a) No person shall interfere with any city employee in the discharge of his duties, or refuse to obey any lawful command of a city employee or law officer.
- (b) No person shall sell, use or have in his possession any controlled substance for sale or use that is prohibited by law.
- (c) It shall be unlawful for any person to engage in violent, abusive, loud, vulgar, lewd, wanton, obscene or otherwise disorderly conduct; or to lounge, sit or lie upon walks, roads or as to obstruct free passage of others. It shall be unlawful for any persons to be intoxicated and to directly endanger the safety of another or of property or to act in a manner causing a public disturbance.
- (d) The maximum speed limit for all vehicles shall be fifteen (15) miles per hour, except where otherwise posted. Motor vehicles shall be driven only on designated park roads and in designated parking areas.
- (e) No person shall possess, use, explode, expose for sale, offer for sale, or sell fireworks or any device or container containing gunpowder in a city park. (This section shall not apply to law enforcement officers.)
- (f) Reserved.
- (g) Any exceptions to these rules must be approved by the city manager or an authorized representative.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_  
NAYS: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023  
Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023  
Effective: \_\_\_\_\_, 2023

CITY COUNCIL  
CITY OF ALLEGAN  
ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND CHAPTER 18 OF THE CITY CODE TO PROVIDE  
FOR THE ADMINISTRATION OF THE CITY'S PARKS AND RECREATION  
FACILITIES**

The City of Allegan ordains:

Section 1. Amendment. Chapter 18 of the City of Allegan, Code of Ordinances, is hereby amended to read in its entirety as follows:

ARTICLE I  
~~IN GENERAL~~PUBLIC SPACES COMMISSION

**Sec. 18-1. ~~Parks~~Public Spaces Commission Established.**

The City shall have a public spaces commission—~~Creation.~~

~~There is hereby created a commission of with the city to be known as the parks commission to accomplish the public purpose and whose~~ powers, duties, and responsibilities ~~shall be~~ set forth ~~in this chapter.~~

**Sec. 18-2. ~~Same~~—Purpose.**

- (a) The ~~parks~~public spaces commission shall advise and make recommendations to the city council on the city parks ~~system's~~system's management, operation, and use. Such responsibilities shall include:
- (1) Preparation, recommendation to the city council for adoption, and continual evaluation of a master plan for development of the city park system.
  - (2) ~~Recommending to the city manager annually~~Annually reviewing and commenting on a budget prepared by the City Manager covering the acquisition, development, maintenance and operation of the city park system.
  - (3) Recommending to the city council capital improvement projects and grants for the city park system.
  - (4) Recommending to the city council policies, rules, and regulations related to the use, operation, and maintenance of the city park system.
  - (5) Preparing an annual report to the city council on the management, operation, and use of the city park system.
- (b) When undertaking its responsibilities, the commission shall recognize that coordinated recreation efforts are needed to provide recreation programs and facilities for all citizens. The commission shall cooperate with community service organizations in providing recreation programs.

**Sec. 18-3. ~~Same~~—Composition.**

~~The parks commission~~(a) As of the effective date of the ordinance that last amended this section, the public spaces commission shall consist of ~~no more than seven (7) voting~~the 9 members, ~~all of whom shall be registered electors that were previously appointed to the city's parks commission, which was the predecessor entity established by prior versions of this article and renamed by resolution~~

of the city. ~~One (1) of the seven (7) council. Notwithstanding any prior ordinance or resolution to the contrary, the terms of all 9 of those~~ members shall ~~be a person currently serving expire~~ on December 31, 2023.

(b) No later than December 31, 2023, the city council. ~~One (1) of the seven (7) shall appoint or reappoint a public spaces commission that consists of 9 members and shall be a person currently,~~ as of January 1, 2024, be constituted as follows:

(1) ~~One member of the city council serving for a term of 1 year, or until such member is no longer a member of the city council, whichever comes first;~~

(2) ~~One member of the downtown development authority board serving on the cemetery committee for a term of 1 year, or until such member is no longer a member of the downtown development authority board, whichever comes first.~~

(3) ~~Two registered electors serving for terms of 1 year.~~

(4) ~~Two registered electors serving for terms of 2 years.~~

(5) ~~Three registered electors serving for terms of 3 years.~~

(b) All voting members shall be appointed by the mayor and confirmed by a majority of the members elected and serving on the city council.

~~Sec. 18-4. Same Term (c) After the initial appointments provided for in section (b) above, the 7 members of office.~~

~~The terms of office of the parkspublic spaces commission voting members who are eligible solely because of their status as registered electors shall be three (3) years, except:~~

(i) ~~That for the first members appointed, three (3) shall be appointed for a three to 3-year term, two (2) members shall be appointed for a two (2) year term, and two (2) shall be appointed for a one (1) year term. terms.~~

(ii) ~~The city councilmember shall serve only so long as he or she is on the city council.~~

~~Except for the initial appointment of commission members where a member's term shall commence upon appointment, all terms of office shall commence on January 1. d) If a commission member's member's term has expired, and a successor has not been appointed, the commission members shall continue to serve until a successor is appointed.~~

~~Sec. 18-5. Same 4. Vacancies.~~

Vacancies on the ~~parkspublic spaces~~ commission shall be filled in the same manner as initial appointments for the remainder of the unexpired term of the appointment vacated.

~~Sec. 18-6. Same 5. Removal from office.~~

~~A commission member Commission members serve at the pleasure of the city council and may be removed from the parks commission by the city council at any time for cause upon the city council receiving a recommendation for removal by the parks commission.~~

~~Sec. 18-7. Same 6. Compensation.~~

Members of the ~~parkspublic spaces~~ commission shall receive no compensation, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties ~~with prior approval from the City Manager.~~

~~Sec. 18-8. Same 7. Meetings.~~



All meetings of the ~~park~~public spaces commission, except as otherwise permitted by law, shall be open to the public and held in compliance with Act No. 267 of the Public Acts of Michigan of 1976 as amended, and as may be amended. ~~Meetings~~Regular meetings of the commission shall be scheduled at regular intervals by resolution and special meetings may be called by the commission chairperson or any two (2) of its members.

**Sec. 18-9. ~~Same~~—8. Quorum.**

A majority of the members of the ~~park~~public spaces commission shall constitute a quorum for conducting the business of the commission.

**Sec. 18-10. ~~Same~~—9. Chairperson.**

The members of the ~~park~~public spaces commission shall, in January of each year, elect one (1) of its members as chairperson. The chairperson shall be responsible for conducting all meetings of the commission. Another member of the commission, selected by commission members present, may serve as temporary chairperson for a meeting from which the chairperson is absent.

**Sec. 18-11. ~~Same~~—10. Execution of contracts and commitment of funds.**

The ~~park~~public spaces commission may advise and make recommendations to the city council regarding the entering into of contracts or the expenditure of city funds in connection with the city park system, but may not itself enter into contracts or commit city funds.

ARTICLE II  
RULES AND REGULATIONS

**Sec. 18-21. Possession of alcoholic liquor.**

It shall be unlawful for any person to possess any alcoholic liquor in a container which is open, uncapped or upon which the seal is broken, or consume any alcoholic liquor in any parks owned or operated by the city; provided, however, that the alcoholic liquor may be sold, possessed and consumed in the public parks during the period of a special license with a specific approval of the council and in conformance with the conditions of such approval and condition of a special license granted by the state liquor control commission. This provision does not apply to the legal consumption of alcoholic liquor, beer, wine or spirits in a commons area of a social district established by the city council in compliance with MCL Section 436.1551, or to such beverages sold pursuant to a special liquor licenses issued by the Michigan Liquor Control Commission with the approval of the city council.

**Sec. 18-22. Littering.**

- (a) It shall be unlawful for any person to litter in a public park.
- (b) It shall be unlawful for any person to place or deposit any garbage, glass, tin cans, papers or miscellaneous waste in any park or playground except in containers provided for that purpose.

**Sec. 18-23. Vandalism.**

It shall be unlawful for any person to commit an act of vandalism in any city park. Vandalism means the intentional destruction, damage or defacement of any public or private property, real or personal, without the consent of the owner or person having lawful custody of the property. The offense shall include, but not be limited to actions taken by cutting, tearing, breaking, marking, painting or drawing when such actions have the effect of destroying, damaging or defacing the property. A violation of this section shall be a misdemeanor offense.

**Sec. 18-24. Building fires.**

It shall be unlawful for any person to kindle or build a fire in any park or playground except in fireplaces or stoves in any park provided for that purpose, or in portable grills or outdoor cooking devices not exceeding 36 inches in either width or length. Upon leaving such fire it shall be the duty of the person last using it to see that the fire is extinguished, and that any charcoal used in setting the fire is properly disposed of. Notwithstanding the forgoing, the City Manager is authorized to issue temporary permits for the setting of other fires and use of other cooking devices for special events (e.g., an annual community pig roast) upon determining that doing so will not endanger the public, and that the benefits to the public outweigh any such risk or other public detriments. A violation of this section shall be a misdemeanor offense.

#### **Sec. 18-25. Use of motor vehicles.**

It shall be unlawful for any person to drive or park any motor vehicle in any park or playground except in spaces set aside and designated as parking areas. Driving and parking on all streets and public ways within any park or bordering on the same shall be subject to the provisions of the Uniform Traffic Code.

#### **Sec. 18-26. Hours.**

Public parks shall be open from dawn to dusk, or as otherwise provided by resolution of the city council. It shall be unlawful for any person to enter upon or remain in a park other than during times when the same are open, unless given permission by the city manager.

#### **Sec. 18-27. Overnight parking.**

Overnight parking in parks is hereby forbidden except that a person may apply to the city manager ~~in case of emergency~~ for permission to remain in a park overnight, and such permit shall be in writing issued by the city manager and shall not exceed ~~twenty-four~~ (24seventy-two (72)) hours.

#### **Sec. 18-28. Rules and regulations.**

- (a) No person shall interfere with any city employee in the discharge of his duties, or refuse to obey any lawful command of a city employee or law officer.
- (b) No person shall sell, use or have in his possession any controlled substance for sale or use that is prohibited by law.
- (c) It shall be unlawful for any person to engage in violent, abusive, loud, vulgar, lewd, wanton, obscene or otherwise disorderly conduct; or to lounge, sit or lie upon walks, roads or as to obstruct free passage of others. It shall be unlawful for any persons to be intoxicated and to directly endanger the safety of another or of property or to act in a manner causing a public disturbance.
- (d) The maximum speed limit for all vehicles shall be fifteen (15) miles per hour, except where otherwise posted. Motor vehicles shall be driven only on designated park roads and in designated parking areas.
- (e) No person shall possess, use, explode, expose for sale, offer for sale, or sell fireworks or any device or container containing gunpowder in a city park. (This section shall not apply to law enforcement officers.)
- (f) Reserved.
- (g) Any exceptions to these rules must be approved by the city manager or an authorized representative.

#### **~~Sec. 18-29. Penalty.~~**

- ~~(a) Unless a section in this chapter specifically provides otherwise, a first violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than fifty dollars (\$50.00).~~

- ~~(b) Unless a section in this chapter specifically provides otherwise, a second violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than one hundred and fifty dollars (\$150.00).~~
- ~~(c) Unless a section in this chapter specifically provides otherwise, a third violation of any provision of this chapter, by any person, is a municipal civil infraction which shall, upon a determination of responsibility, be punishable by a fine of not less than three hundred dollars (\$300.00).~~
- ~~(d) In addition to a fine, a person determined to be responsible for a municipal civil infraction under this chapter shall be assessed the cost of prosecution of not less than nine dollars (\$9.00) but not to exceed five hundred dollars (\$500.00).~~
- ~~(e) The fourth and any subsequent violation of any provision of this chapter, by any person, is a misdemeanor which shall, upon conviction, be punishable in accordance with section 1-13 of this Code.~~
- ~~(f) In addition to the penalties provided by this section, the district court shall have equitable jurisdiction to enforce any judgment, writ, or order necessary to enforce any provision, the violation of which is a municipal civil infraction, including, but not limited to, abatement of the violating condition or the granting of any injunctive relief.~~

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

### **CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023

**CITY COUNCIL**  
**CITY OF ALLEGAN**  
**ALLEGAN COUNTY, MICHIGAN**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO REPEAL CHAPTER 21 OF THE CITY CODE AS  
UNNECESSARY**

The City of Allegan ordains:

Section 1. Repealer. Chapter 21 of the City of Allegan, Code of Ordinances, entitled "Police," is hereby repealed because it is unnecessary to adopt the Michigan Commission on Law Enforcement Standards licensing standards by ordinance.

Section 2. Publication and Effective Date. The City Clerk shall cause a notice of adoption of this ordinance to be published. This ordinance shall take effect upon publication.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**CERTIFICATION**

This is a true and complete copy of Ordinance No. \_\_\_\_\_ adopted at a regular meeting of the Allegan City Council held on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Teresa Galloway, Mayor

\_\_\_\_\_  
Michaela Kleehammer, Clerk

Introduced: \_\_\_\_\_, 2023

Adopted: \_\_\_\_\_, 2023

Published: \_\_\_\_\_, 2023

Effective: \_\_\_\_\_, 2023



**PROFESSIONAL CODE INSPECTIONS  
OF MICHIGAN, INC.**  
1575 142<sup>nd</sup> Avenue  
Dorr, MI 49323  
(616) 877-2000

## MEMORANDUM

**TO:** Allegan City Council  
**FROM:** Jason Derry, Zoning Administrator  
**DATE:** August 21, 2023  
**RE:** **Caldarona – Lot Combination – 03-51-300-043-01 & 03-51-300-045-00**

The City Council is set to review a minor plat amendment within the City of Allegan.

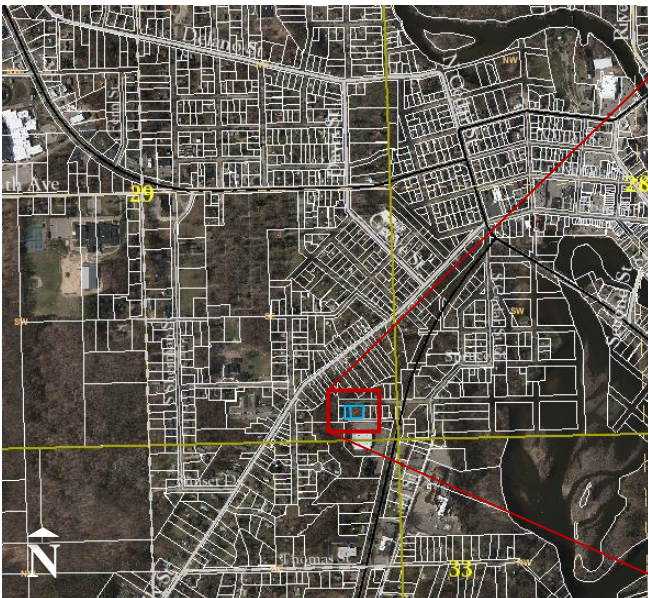
## GENERAL OVERVIEW

### Property Information

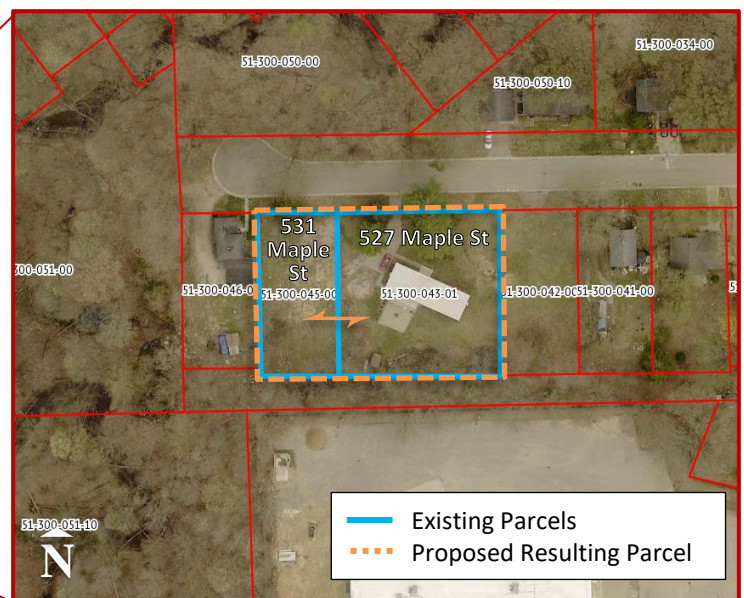
The properties in question are parcel numbers *03-51-300-043-01* (527 Maple Street), owned by Kirklynn Caldarona, and *03-51-300-045-00* (531 Maple Street), owned by Roberta Morrie. 527 Maple Street comprises 0.44 acres and hosts an owner-occupied dwelling. 531 Maple Street comprises 0.21 acres and is currently vacant. Both parcels are zoned R-2 Single-family Residential – Medium Density Zoning District.

### Request Information

There is a request before the Board to combine Parcels *-03-51-100-061-00* and *-190-027-00*. Caldarona and Morrie currently have a purchase agreement for Caldarona's purchase of 531 Maple Street, contingent on the ability to combine the subject parcels (included). Please see the aerial photos and attached application for your reference.



Subject properties in relation to the City of Allegan  
(Allegan County Parcel Viewer 2.0, 2021)



Subject properties in relation to each other  
(CONNECTExplorer Eagleview, 2023)

While both properties have parcel numbers that suggest they are part of a plat, neither legal descriptions nor title work indicate as such. Therefore, while City of Allegan Ordinances still dictate that City Council must approve the proposed combination, it is not considered a minor plat amendment.

Section 5.03 of the Municipal Ordinance states that Council approval is required to complete this combination, subject to the limitations spelled out in Section 5.04. It is my opinion this combination complies with the requirements of Section 5.04, and therefore is qualified to come before you for approval. A copy of Sections 5.03 and 5.04 have been attached for your convenience.

## **Conclusion**

I hope the information provided is helpful to you as you consider this request. If you have any questions or concerns, please do not hesitate to contact me and I will assist in any way that I am able. You may reach me by phone at either (616) 877-2000 Ext. 215 or by email at [jderry@pcimi.com](mailto:jderry@pcimi.com).

Sincerely,

A handwritten signature in cursive script that reads "Jason Derry". The signature is written in dark ink and is positioned below the word "Sincerely,".

Jason Derry  
City of Allegan Zoning Administrator  
Professional Code Inspections of Michigan, Inc.

SECTION V. - FURTHER PARTITIONS, DIVISIONS, COMBINATIONS OR BOUNDARY LINES CHANGES WITHIN  
PLATTED SUBDIVISIONS

Sec. 5.01. - General.

- A. Except where a formal replat is involved, every partition, division, split, combination or boundary line change of a lot or lots in a recorded subdivision within the city shall be subject to the provisions of this section.

(Ord. No. 364, § 1, 9-9-02)

Sec. 5.02. - Application.

- A. The owner seeking approval to partition, divide, split, combine or change the boundary line of a lot or lots within a platted subdivision shall file an application in affidavit form with the city clerk, which shall set forth the reasons for the proposed partition, division, split, combination or boundary line change and shall be accompanied by the applicable fee(s) and an illustrative sketch or drawing, showing the original and resulting lots and dimensions.

(Ord. No. 364, § 1, 9-9-02)

Sec. 5.03. - Approval.

- A. Subject to the limitations contained in section 5.04, the city council may approve, conditionally approve or deny the application in its discretion, and no partition, division, split, combination or boundary line change shall occur without the prior approval of the city council.

(Ord. No. 364, § 1, 9-9-02)

Sec. 5.04. - Limitations.

- A. The partition, division, split, combination or boundary line change of the lot or lots shall result in not more than 4 buildable lots.
- B. No lot, out-lot or other parcel of land shall be further partitioned, split or divided unless:
  - 1. The lot, out-lot or other parcel of land is served by public sewer and public water systems;
  - 2. The resulting lots, out-lots or other parcels meet the minimum width and area standards established by this section, the City Zoning Ordinance and the Subdivision Control Act of 1967, Act No. 288 of the Public Acts of Michigan of 1967, as amended;
  - 3. The resulting lot(s) or parcel(s):
    - (a) Have direct access to a public roadway or private roadway constructed to the

standards of this section;

- (b) Are serviced by public utilities necessary or required by law; and
  - (c) Conform in all particulars to the requirements of the Subdivision Control Act of 1967; and
4. The proposed partition, split or division is found by the city council not to be detrimental to the public welfare or injurious to other property in the area in which said property is situated.

(Ord. No. 364, § 1, 9-9-02)





**PROFESSIONAL CODE INSPECTIONS  
OF MICHIGAN, INC.**

1575 142nd Avenue  
Dorr, MI 49323  
(616) 877-2000  
(Fax) #(616) 877-4455

REQUEST FOR PROPERTY DESCRIPTIONS TO BE COMBINED

08/14/2023

Date

To the Assessor of City of Allegan Township, I hereby request that the following listed properties be combined into one description for tax purposes:

Permanent Parcel Number	03-	<u>51</u>	-	<u>300</u>	-	<u>043</u>	-	<u>01</u>
	03-	<u>51</u>	-	<u>300</u>	-	<u>045</u>	-	<u>00</u>
	03-		-		-		-	
	03-		-		-		-	

Or, Legal Descriptions

Legal for 03-51-300-043-01 is as follows: COM ON S SIDE OF MAPLE ST 347.5 FT W OF E LINE SEC TH W 137.5 FT  
TH S 140.25 FT TH E 137.5 FT TH N 140.25 FT TO BEG. SPLIT/COMBINED ON 01/25/2019 FROM 51-300-043-00, 51-300-044-00;

Legal for 03-51-300-045-00 is as follows: COM ON S LINE MAPLE ST 485 FT W OF E SEC LINE TH S 140.25 FT TH W  
66 FT TH N 140.25 FT TH E 66 FT TO BEG SEC 29.

Address of parcel is: 531 Maple St., Allegan, MI 49010.

531 Maple St. to be combined with 527 Maple St. so buyer can eventually build a garage.

Kirklynn Caldarona Owner of 527 Maple St. & buyer of 531 Maple St.

Buyer's Agent-Ashley Gauthier with Coldwell Banker Sneller Real Estate.  
Cell: 269-779-0521  
Email: [ashley@snellerrealestate.com](mailto:ashley@snellerrealestate.com)

*Kirklynn Caldarona*

dotloop verified  
08/14/23 4:46 PM EDT  
C1L2-TTTP-LYRP-PVSA

Owner or Agent

269-903-7308

Phone number

Attachments

- ☐ Copy of Deed
- ☐ Copy of Land Contract
- ☐ Plot Plan or Survey

Approval:

Assessor

Date

☐ Received by Allegan County Equalization Department

Date

STATE OF  
MICHIGAN



REAL ESTATE  
TRANSFER TAX



Allegan County  
08/16/2021  
2021020034

\$221.10 CO  
\$1,507.50 ST  
TTX# 41309



Allegan County MI Register of Deeds  
Bob Genetski, Register of Deeds  
Document # 2021020034  
OPR LIBER 4658 PAGE 633  
Recorded: 08/16/2021 08:46 AM

**Warranty Deed - Statutory Form**  
C.L. 1948, 565.151 M.S.A. 26571

KNOW ALL MEN BY THESE PRESENTS: That Roger L. Bird, Jr. and Michele R. Bird, husband and wife, whose street number and post office address is 527 Maple St, Allegan, MI 49010, convey(s) and warrant(s) to Kirklynn Caldarona, a single man, whose street number and post office address is 3692 Emma Lane, Allegan, MI 49010 the following described premises:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Commonly known as: 527 Maple Street, Allegan, MI 49010

for the full consideration of Two Hundred One Thousand And No/100 Dollars (\$201,000.00).

Subject to easements, reservations, restrictions and limitations of record, if any, and further subject to:

NONE

RECEIVED

'21 AUG 13 AM 11:31

Tax Certification # 309573  
Obtained from Allegan County  
Treasurer Prior to Recording

(prior) 03 51-300-044-00 OK (part) 0351-300-04301 OK  
(prior) 0351-300-043-00 OK

THE CURRENT YEAR TAX WAS  
NOT AVAILABLE FOR EXAMINATION

PENDING RECEIPT OF DENIAL  
OF HOMESTEAD TAX EXEMPTION

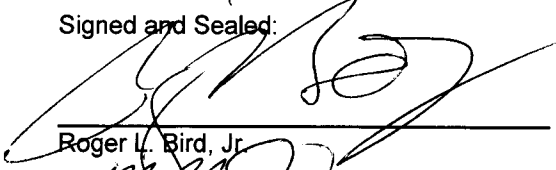
✓

1500-200

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 8/4/21

Signed and Sealed:




Roger L. Bird, Jr.

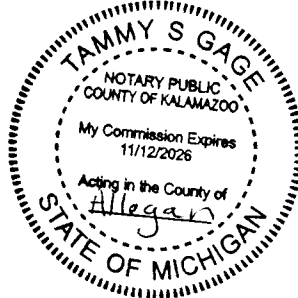
Michele R. Bird

State of Michigan  
County of Allegan

I, Tammy S. Gage, a Notary Public of the County and the State first above written, do hereby certify that Roger L. Bird, Jr. and Michele R. Bird personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of August, 2021.

  
Name: TAMMY S. GAGE  
Notary Public - State of MICHIGAN  
KALAMAZOO County  
My Commission Expires: 11/12/26  
Acting in the County of ALLEGAN



(Seal)

**Assisted By:**  
Chicago Title of Michigan,  
Inc.  
941 W. Milham Ave.  
Portage, MI 49024

**Drafted by:**  
Roger Bird  
527 Maple St  
Allegan, MI 49010

**Mail After Recording To:**  
Kirklynn Caldarona  
527 Maple Street  
Allegan, MI 49010

**Send Subsequent  
Tax Bills To:**  
Kirklynn Caldarona  
527 Maple Street  
Allegan, MI 49010

**Recording Fee:** \$30.00

**Real Estate Transfer Tax:** \$1,728.60

**Tax parcel no.:** 03-51-300-043-01

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 03-51-300-043-01**

---

Land Situated in the State of Michigan, County of Allegan, City of Allegan.

Commencing on the South side of Maple Street at a point 347.5 feet West of the East line of Section 29, Town 2 North, Range 13 West, City of Allegan, Allegan County, Michigan; thence West 71.5 feet; thence South 140.25 feet; thence East 71.5 feet; thence North 140.25 feet to the place of beginning.

Allegan County MI Register of Deeds  
Bob Genetski, Register of Deeds  
Document # 2022002590  
OPR LIBER 4727 PAGE 288  
Recorded: 02/04/2022 09:12 AM

### AFFIDAVIT OF SCRIVENER'S ERROR

STATE OF MICHIGAN

COUNTY OF ALLEGAN

The undersigned Affiant, being first duly sworn, deposes and states as follows:

1. The Affiant is an employee of Trish Andres and is familiar with certain facts regarding the following described property:

Land in the City of Allegan, County of Allegan, State of Michigan, described to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

More Commonly Known As: 527 Maple Street, Allegan, MI 49010  
Tax Item No.: 03-51-300-043-01

- That on August 4, 2021 a Warranty Deed was executed by Roger L Bird, Jr. and Michele R. Bird, husband and wife. A copy of the Warranty Deed is attached hereto as Exhibit "B";
- That the legal description was stated incorrectly on the Warranty Deed;
- That the legal description on the Warranty Deed should have read See Exhibit 'A';
- That this Affidavit is being given to correct the error in the legal description;
- That this Affidavit is being executed and recorded pursuant to MCLA 565.451(a).

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

AFFIANT:



Signature

Trish Andres, Escrow Agent for Chicago Title  
Print Name

State of Michigan  
County of Kalamazoo

I, Shannon M. Drzick, a Notary Public of the County and the State first above written, do hereby certify Trish Andres, Escrow Agent for Chicago Title, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 2nd day of February 2022

Name: Shannon M. Drzick  
Notary Public - State of Michigan  
Kalamazoo County  
My Commission Expires: August 9, 2022  
Acting in the County of Kalamazoo

Tax Certification # 315796  
Obtained from Allegan County  
Treasurer Prior to Recording

(Seal)

Drafted by:  
Trish Andres  
Chicago Title  
941 W. Milham  
Portage, MI 49024

Mail After Recording To:  
Trish Andres  
Chicago Title of Michigan, Inc.  
941 W. Milham Ave.  
Portage, MI 49024

RECEIVED

'22 FEB 3 AM 11:33

Affidavit (Scrivener's Error)  
MID1105.doc / Updated: 08.03.15

Page 1

Printed: 02.02.22 @ 09:41 AM by  
MI-CT-FGTF-02330.313418-031151914ETA

chic portage - enc

**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 03-51-300-043-01**

---

Land Situated in the State of Michigan, County of Allegan, City of Allegan.

Commencing on the South side of Maple Street at a point 347.5 feet West of the East line of Section 29, Town 2 North, Range 13 West, City of Allegan, Allegan County, Michigan; thence West 137.5 feet; thence South 140.25 feet; thence East 137.5 feet; thence North 140.25 feet to the place of beginning.

Exhibit B

(part)  
03-51-300-044-00 OK  
0351-300-0430-04  
(part)  
0351-300-0430-04

STATE OF MICHIGAN  
REAL ESTATE TRANSFER TAX  
Allegan County  
08/16/2021  
2021020034  
\$221.10 CO  
\$1,507.50 ST  
TTN# 41309

Allegan County MI Register of Deeds  
Bob Genetski, Register of Deeds  
Document # 2021020034  
OIR LIBER 4658 PAGE 633  
Recorded: 08/16/2021 08:46 AM

Warranty Deed - Statutory Form  
C.L. 1948, 565.151 M.S.A. 26571

KNOW ALL MEN BY THESE PRESENTS: That Roger L. Bird, Jr. and Michele R. Bird, husband and wife, whose street number and post office address is 527 Maple St, Allegan, MI 49010, convey(s) and warrant(s) to Kirklynn Calderona, a single man, whose street number and post office address is 3692 Emma Lane, Allegan, MI 49010 the following described premises:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Commonly known as: 527 Maple Street, Allegan, MI 49010

for the full consideration of Two Hundred One Thousand And No/100 Dollars (\$201,000.00).

Subject to easements, reservations, restrictions and limitations of record, if any, and further subject to:

NONE

RECEIVED

'21 AUG 13 AM 11:0

THE CURRENT YEAR TAX WAS  
NOT AVAILABLE FOR EXAMINATION

PENDING RECEIPT OF DENIAL  
OF HOMESTEAD TAX EXEMPTION

Deed (Warranty - Statutory Form) Letter  
MID1173.doc / Updated: 03/09/21

Page 1

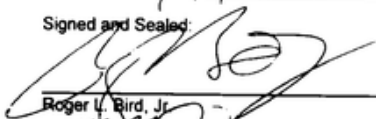

Printed: 08/03/21 @ 02:45 PM by  
MI-CT-FGTF-02330.313416-031151914ETA

Tax Certification # 309573  
Obtained from Allegan County  
Treasurer Prior to Recording

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Dated: 8/4/21

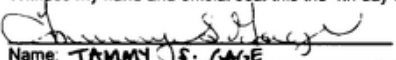
Signed and Sealed:

  
\_\_\_\_\_  
Roger L. Bird, Jr.  
  
\_\_\_\_\_  
Michele R. Bird

State of Michigan  
County of Allegan

I, Tammy S. Gage, a Notary Public of the County and the State first above written, do hereby certify that Roger L. Bird Jr. and Michele R. Bird personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 4th day of August, 2021.

  
Name: TAMMY S. GAGE  
Notary Public - State of MICHIGAN  
Kalamazoo County  
My Commission Expires: 11/12/26  
Acting in the County of ALLEGAN



(Seal)

Return Recorded Documents To:

Assisted By:  
Chicago Title of Michigan,  
Inc.  
941 W. Milham Ave.  
Portage, MI 49024

Drafted by:  
Roger Bird  
527 Maple St  
Allegan, MI 49010

A.S.K. Services  
40600 Ann Arbor Rd E, Ste 200  
Plymouth, MI 48170

d Subsequent  
Bills To:  
ynn Calderona  
Maple Street  
Jan, MI 49010

Recording Fee: \$30.00

Real Estate Transfer Tax: \$1,728.60

Tax parcel no.: 03-51-300-043-01



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 03-51-300-043-01**

Land Situated in the State of Michigan, County of Allegan, City of Allegan.

Commencing on the South side of Maple Street at a point 347.5 feet West of the East line of Section 29, Town 2 North, Range 13 West, City of Allegan, Allegan County, Michigan; thence West 71.5 feet; thence South 140.25 feet; thence East 71.5 feet; thence North 140.25 feet to the place of beginning.



**AUTHORIZED VACANT LAND BUY & SELL AGREEMENT ("Agreement") OF THE  
GREATER KALAMAZOO ASSOCIATION OF REALTORS®**



Date 08/05/2023

Form#: 531-RBS

MLS No. 23011340

**1. DEFINITIONS:**

- A. **EFFECTIVE DATE:** This Agreement shall be binding on the date of: (1) delivery to Buyer or Buyer's Broker of Seller's written acceptance of Buyer's offer; or (2) delivery to Seller or Seller's Broker of Buyer's written acceptance of Seller's counteroffer. This date shall be referred to as the "Effective Date".
- B. **DELIVERY:** Delivery shall be effective at the time: (1) of personal service; (2) sent by email; (3) sent by facsimile with a successful confirmation page; (4) sent by any other electronic means then commonly in use; or (5) of any other means permitted by applicable state or federal statute.
- C. **DAYS:** Any reference to "days" in this Agreement refers to calendar days. The first calendar day begins at 12:01 a.m. on the day after the Effective Date.
- D. **TIME:** Any reference to "time" refers to Kalamazoo, Michigan time.
- E. **BROKERS:** The terms "Broker" and "Brokers" refer collectively to the listing and selling real estate brokers, the brokers' officers, directors, agents, employees and assigns.
- F. **PARTIES:** Buyer and Seller are collectively referred to as the "Parties"; singularly, "Party"

**2. PRIOR OFFERS:** This offer terminates any prior offers or counteroffers between The Parties for The Property.

**3. CONFIDENTIALITY DISCLAIMER:** Buyer acknowledges Buyer has been advised that Seller and Seller's Broker are not required to keep the terms of Buyer's offer confidential. The Parties further acknowledge that the sale price and terms will be disclosed to the Greater Kalamazoo Association of REALTORS® MLS, who may use it in the ordinary course of business.

**4. SALE PRICE:** Eight Thousand Dollars & 00/100 (\$ 8,000 ) Dollars

**5. PROPERTY DESCRIPTION:** Buyer agrees to buy and Seller agrees to sell The Property, commonly known as,  
531 Maple St., Allegan, MI 49010.  
(Property Street Address—Full Mailing Address) (Zip)

The Property is: located in the ☒ CITY ☐ VILLAGE ☐ TWP. of Allegan, Allegan County,  
(City/Village/Township Name) (County Name)

Michigan; subject to existing zoning ordinances; and legally described as: COM ON S LINE MAPLE ST 485 FT W OF E SEC LINE TH S  
(**"The Property"**)

140.25 FT TH W 66 FT TH N 140.25 FT TH E 66 FT TO BEG SEC 29.

TAX ID# 03-51-300-045-00

**6. THE PROPERTY SHALL INCLUDE ALL IMPROVEMENTS AND APPURTENANCES AND ANY AND ALL ITEMS AND FIXTURES PERMANENTLY AFFIXED TO THE PROPERTY** (if present at The Property on the above date):

A. **INCLUDED WITH THE SALE:** Vacant Land

B. **EXCLUDED FROM THE SALE AND TO BE REMOVED BY SELLER:** N/A-Vacant Land

**7. ATTACHED DOCUMENTS AND/OR OTHER PROVISIONS:** 531-DAAB

**8. CLOSING:** Sale shall be closed on a day and time mutually agreeable to The Parties, not earlier than 08/21/2023 and not later than 09/08/2023. **Buyer and Seller shall each pay their title company closing fee.** Seller shall pay real estate transfer taxes at the time the deed is delivered.

**9. POSSESSION:** Buyer shall be entitled to possession of The Property at the completion of closing.

**Seller shall not be entitled to possession after closing. Unless otherwise provided in writing and signed by The Parties, Seller shall provide possession of The Property free from the rights of any other person or entity, including, but not limited to, tenants.** At the time of transfer of possession of The Property, Seller shall have removed all personal property (unless otherwise stated in this or an additional written agreement).

Seller shall maintain The Property in its present condition until time of possession in this transaction, normal and reasonable wear excepted. Seller shall pay for utilities and for any repairs due to damage caused by the Seller to The Property after closing and before transfer of possession.

- 10. SELLER'S REPRESENTATIONS:** The following representations shall survive the closing and, except as otherwise disclosed in writing, Seller represents that:
- A. There is no pending or threatened litigation, administrative action or claim relating to The Property.
  - B. Seller has not been notified of any assessments to be placed on The Property.
  - C. The Seller is the owner of title to The Property in the condition required for performance hereunder.
  - D. The Property is not a new land division under the Land Division Act and Seller owns no other contiguous, unplatted land unless otherwise disclosed in writing. Seller is transferring to Buyer all available divisions, if any, under Section 108 of the Land Division Act but makes no representations as to the number. Buyer has not relied on any information or opinions of the Brokers on this matter.
  - E. To the best of the Seller's knowledge, there are no existing violations of any laws, statutes, ordinances, regulations, orders or requirements of any governmental authority affecting The Property.

**11. LEASE REPRESENTATIONS:** If The Property is leased;

- A. Seller shall notify Buyer in writing of the possession rights of any person or entity, including, but not limited to, lessees and hunting rights. Seller shall provide copies of all leases and security deposit information to Buyer within three (3) days after the Effective Date. This Agreement is contingent upon Buyer's written acceptance of those possession rights, leases and security deposit information within five (5) days after receipt of the notice and copies. If Seller does not provide notice and copies within three (3) days, Seller warrants that no other person or entity has possession rights. If Buyer receives notice and copies and neither accepts nor rejects these items within the five (5) days, Buyer shall be deemed to have accepted them and this contingency shall be deemed satisfied.
- B. None of the lessees occupying The Property shall be entitled to any concessions, rebates, allowances or free rent for any period after the Closing Date.

After the date hereof, the Seller will not enter into any agreement pertaining to The Property or any modification of, or release from, an existing lease, without the prior written consent of Buyer.

- 12. VACANT LAND SELLER'S DISCLOSURE:** Buyer ☒ has ☐ HAS NOT received a completed and signed copy of the Vacant Land Seller's Disclosure #531VLSD dated or revised 04/14/2023. Seller hereby certifies that to the best of the Seller's knowledge the information contained in such Vacant Land Seller's Disclosure is current as of the date of this Agreement. Further, Seller agrees to inform Buyer in writing of any changes in the condition of The Property relating to the information contained in such disclosure statement.

**13. ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES:** Seller makes the following representations and warranties to Buyer, which representations and warranties shall survive the transfer of title from Seller to Buyer:

- A. Seller is unaware of any action, either threatened or commenced, by any governmental agency arising out of an alleged violation of any environmental law or regulation on the Property.
- B. No governmental agency has notified Seller of any violation of any environmental law or regulation on the Property.
- C. Seller is unaware of any civil action, either threatened or commenced, by a party other than a governmental agency arising out of an alleged environmental mishap occurring on the Property.
- D. Seller is unaware of any environmental mishap with respect to the Property.
- E. Seller is unaware of any Hazardous Materials or Hazardous Substances (as such terms are defined below) on or about the Property.
- F. Seller is unaware of any past and/or present uses of the Property that would violate any relevant federal, state, or local environmental laws or regulations.

For the purposes of this Section 8, the terms "Hazardous Materials" and "Hazardous Substances" shall include but shall not be limited to any of the following: (i) asbestos; (ii) urea formaldehyde foam insulation; (iii) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; (iv) any mold, fungus or similar growth; or, (v) any other chemical, material, substance, or other matter of any kind whatsoever which is prohibited, limited or regulated by any federal, state, county, regional, or local authority or legislation, including, without limitation, the Federal Resource Conservation and Recovery Act, 42 U.S.C §§ 6901 et seq., the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C §§ 9601 et seq., the regulations promulgated from time to time thereunder, environmental laws administered by the Environmental Protection Agency and laws and regulations of the State of Michigan, or any other governmental organization or agency having jurisdiction.

**14. METHOD OF PAYMENT:** All moneys must be paid in US funds by wire transfer, certified check, cashier's check, or money order. The sale will be completed upon Seller's delivery of a warranty deed conveying marketable title in accord with Buyer's delivery of the sale price by the following method:

- ☐ A. **NEW MORTGAGE.** This Agreement is contingent upon Buyer's ability to obtain a(n) \_\_\_\_\_ (type) mortgage loan in the amount of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the sale price. Buyer shall apply for the loan from \_\_\_\_\_ (name of financial institution-Lender) within \_\_\_\_\_ days after the Effective Date. Loan application shall include the payment of any appraisal fee, application fee, and all other costs customarily charged by Lender for loan approval. Buyer acknowledges that failure to complete the loan application as agreed shall constitute a default by Buyer. Buyer shall take no action that would impair Buyer's credit or ability to obtain the loan and shall accept such loan if offered. Buyer may waive this mortgage loan contingency by written notice to Seller and pay cash as provided in subparagraph B below.

Seller may terminate this Agreement by written notice to Buyer if Buyer fails to provide Seller with evidence of loan approval by 11:59 pm \_\_\_\_\_ ("Loan Approval Deadline Date"). If Buyer is unable to obtain written

verification of Lender's approval, Buyer may provide oral verification from Lender to Seller. If said loan approval is acceptable to Seller, no response shall be necessary.

If Seller reasonably determines that the evidence of loan approval is inadequate or unacceptable and if Seller therefore wishes to terminate, Seller must deliver written notice of termination of this Agreement by 11:59 pm on the third (3) day after the Loan Approval Deadline Date. If Seller so terminates, Buyer may waive this mortgage contingency and void the termination by delivering written notice of such waiver to Seller by 11:59 pm on the third (3) day after Seller's delivery of termination. If Buyer waives this mortgage contingency and subsequently fails to close due to Buyer's failure to secure financing, Buyer shall be considered in default in this Agreement.

**BUYER HEREBY INSTRUCTS LENDER TO RELEASE TO SELLING BROKER AND SELLER OR LISTING BROKER INFORMATION CONCERNING COMPLETION OF LOAN APPLICATION AND STATUS OF LOAN APPROVAL.**

☒ B. **CASH.** Buyer will pay the sale price by certified check, cashier's check, or wire transfer.

☐ C. **LAND CONTRACT.** See attached GKAR Land Contract Addendum # \_\_\_\_\_.

15. **FINANCIAL CONTINGENCIES:** *If none of the boxes below are checked*, Buyer represents that no sale, release of liability nor event of any kind, other than as specified herein, is required for Buyer to complete this Agreement. Further, Buyer represents that all of the funds necessary to complete this Agreement, on the terms specified, are currently available to Buyer in cash or an equally liquid equivalent. *If any of the boxes below are checked*, Buyer shall notify Seller in writing within **forty-eight (48) hours** of any changes that may delay or materially affect the consummation of this Agreement, such as, but not limited to, changes in the terms or progress of a pending sale upon which this Agreement is contingent or changes in the progress or likelihood of any of the items detailed in B below. In such an event, Seller may terminate this Agreement by written notice to Buyer within forty-eight (48) hours of receipt of said notice from Buyer. Failure of Buyer to notify Seller of such changes, or a default by Buyer in consummating the items checked below, shall be considered a default in this Agreement.

☐ A. **APPRAISED VALUE.** Buyer may terminate this Agreement in writing within three (3) days of Buyer being notified that The Property appraised below the sales price. The appraisal shall be conducted by a licensed appraiser and paid by Buyer. If Buyer indicates The Property appraised below sales price, Buyer shall provide a copy of the appraisal to Seller upon request.

☐ B. **OTHER:** (check all that apply): Buyer's ability to consummate this Agreement is contingent upon the following: ☐ Divorce settlement ☐ Legal settlement ☐ Withdrawal of retirement funds ☐ Receipt of gift ☐ Sale of personal property ☐ Receipt of inheritance ☐ Home equity line of credit ☒ Other: \_\_\_\_\_  
Further Explanation: \_\_\_\_\_

16. **DISCLAIMER:** Buyer understands and agrees that the Brokers do not warrant: The Property's boundaries, the size of the land, the size of the buildings and improvements; the condition of The Property or; that appropriate permits were obtained for repairs or other work performed on buildings or improvements. Buyer understands and agrees that the Brokers do not assume any responsibility for the representations made by Seller. It is further understood that no representations or promises have been made to Buyer by the Brokers, or by Seller other than those contained in this Agreement or as otherwise made or given by Seller to Buyer in the written disclosure statement(s). The Parties understand that Brokers are not environmental experts. Unless expressly contained in a written instrument signed by the Brokers, Brokers have no knowledge of and make no representations regarding the environmental condition of The Property, the existence of underground storage tanks at The Property now or in the past, whether The Property is, has been or may be listed as a site of environmental contamination, or whether any such sites are located in the proximity of The Property. If Buyer or Seller requests the Brokers to recommend inspectors, repairmen or other professionals, The Parties agree that the Brokers shall not be liable for errors or omissions made by said inspectors, repairmen or other professionals.

17. **BUYER INVESTIGATIONS:**

A. **Buyer Acknowledgment:** Buyer acknowledges that Buyer has been advised to carefully evaluate The Property to determine its condition and suitability for Buyer's intended use. Buyer is aware that inspectors and inspection services are available to aid Buyer in these evaluations. Items Buyer should evaluate include, but are not limited to: infestation; environmental concerns such as underground storage tanks or abandoned uncapped wells; health or safety issues, including radon and mold; zoning; assessed valuation, including the size of the land; the size or the suitability of well and septic, the availability of utilities, including the cost to extend or hook-up; soil erosion or settling; the existence of wetlands; location within a flood zone; and the availability of flood insurance at a cost acceptable to Buyer.

B. **Buyer Investigation Period:** Buyer shall have until 11:59 pm, twenty (20) days after the Effective Date to investigate The Property ("Investigation Period"). During the Investigation Period, Buyer and Buyer's investigators shall have reasonable access to The Property to conduct investigations as Buyer deems necessary. Buyer agrees to defend, indemnify and hold Seller harmless from any physical damage to persons or property resulting from such investigations. To the extent The Property is damaged due to any of Buyer's investigations, Buyer agrees to restore The Property to its previous condition. Buyer is solely responsible for ordering and paying for any inspections and evaluations.

C. **Results of Investigations:** If any investigation reveals a condition unacceptable to Buyer, then, **prior to the expiration of the Investigation Period**, Buyer may pursue one of the following resolutions (C1 or C2):

1. **Buyer may Deliver to Seller a written request for corrective action(s)** on the GKAR Investigations Addendum, or a similar notice, and may include any documentation, reports, and/or cost estimates that Buyer deems appropriate.

- a. Seller shall have until 11:59 pm, five (5) days after receipt of the Investigations Addendum, or a similar notice, to respond to Buyer in writing as to whether Seller will agree to pay for and/or perform said requested corrective action(s).
- b. If Seller rejects any part of Buyer's request in writing, Buyer shall have until 11:59 pm, three (3) days after receipt of Seller's written rejection to terminate this Agreement in writing.
- c. If Seller does not respond in writing, Buyer shall have until 11:59 pm, three (3) days after the expiration of Seller's allowed five (5) day period to terminate this Agreement in writing.

**OR**

2. **Buyer may terminate this Agreement** by providing written notice of the termination to Seller within the Investigations Period. At Seller's sole option and request, Buyer shall provide Seller with a copy of any inspection report or portion thereof or such other documentation obtained per this paragraph that Seller deems useful to Seller.

- D. **Waiver of Contingencies:** BUYER AGREES THAT THE CONTINGENCIES IN THIS PARAGRAPH SHALL BE DEEMED TO HAVE BEEN WAIVED IF (1) BUYER FAILS TO DELIVER WRITTEN NOTICE OF BUYER'S PROPOSED RESOLUTION TO SELLER WITHIN THE INVESTIGATION PERIOD OR (2) BUYER FAILS TO TERMINATE THIS AGREEMENT IN WRITING AS PROVIDED ABOVE. IF THESE CONTINGENCIES ARE WAIVED, OR IF BUYER ELECTS TO CLOSE THIS TRANSACTION, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE PROPERTY IN ITS "AS-IS" CONDITION AS IT RELATES TO THIS PARAGRAPH AS OF THE DATE OF CLOSING, SUBJECT TO THE PROVISIONS OF PARAGRAPH 9.

18. **TITLE EVIDENCE:** Seller agrees to convey marketable title to The Property subject to conditions, limitations, building and use restrictions and easements of record ("Exceptions"). As evidence of marketable title, Seller shall furnish Buyer, at Seller's expense, an *ALTA Policy of Title Insurance* in the amount of the sale price. Seller shall order the commitment for such policy, along with copies of the Exceptions and supporting documents, and shall deliver same to Buyer within ten (10) days after the Effective Date of this Agreement. If a survey or mortgage report is required by the commitment, it shall be completed at Buyer's expense.

If the commitment discloses any title defect(s) or anything in the Exceptions which would interfere with Buyer's intended use of The Property, Buyer must notify Seller in writing of Buyer's objections within five (5) days after Seller's delivery of the commitment and Exceptions. Further, if, prior to closing, Buyer shall become aware of new title defect(s), Buyer must notify Seller, in writing, within five (5) days after Buyer becoming aware of such defect(s).

If Seller receives any such notification, Seller shall have either thirty (30) days after Buyer's delivery of written objection(s) or until the latest closing date set forth in Paragraph 8 of this Agreement, whichever first occurs, to resolve Buyer's objection(s). If Seller is unable to cure the title defects(s), or unable or unwilling to resolve Buyer's objection(s) to Exceptions within this time period, Buyer may terminate this Agreement in writing or proceed to closing, accepting the status of the title "AS IS".

19. **LOCATION OF BOUNDARIES AND IMPROVEMENTS (IF ANY):** Buyer may, at Buyer's expense, obtain a survey or mortgage report of The Property. If the survey or mortgage report reveals material differences in The Property's boundaries or land area from that which was represented by Seller in writing, or encroachments, setback violations, or matters which would interfere with Buyer's intended use of The Property ("Survey Defects"), Buyer shall furnish Seller with a copy of the survey or mortgage report, along with a written request that Seller correct the Survey Defect(s). These must be received by Seller no later than fifteen (15) days after delivery of the title commitment referenced in Paragraph 18 to Buyer. Seller shall respond in writing to Buyer within five (5) days as to whether or not Seller will correct the Survey Defect(s). If Seller does not agree to do so or fails to respond, Buyer shall have three (3) days from receipt of Seller's written refusal (if any) or from the expiration of Seller's allowed time, whichever first occurs, to terminate this Agreement in writing.

BUYER AGREES THAT THIS CONTINGENCY SHALL BE DEEMED WAIVED IF BUYER FAILS TO PROVIDE SELLER WITH A SURVEY OR MORTGAGE REPORT OR BUYER FAILS TO TERMINATE THIS AGREEMENT IN WRITING AS PROVIDED ABOVE. IF THIS CONTINGENCY IS WAIVED AND BUYER ELECTS TO CLOSE THIS TRANSACTION, BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE LOCATION OF THE PROPERTY BOUNDARIES AND IMPROVEMENTS, "AS IS".

20. **PRORATIONS:** Items normally prorated in real estate transactions, including association fees and assessments, rental income, taxes as discussed below, interest on any existing land contract, mortgage, or lien assumed by Buyer shall be adjusted to the date of closing in accordance with the calendar year. All rental security deposits shall be paid to Buyer at closing.

21. **REAL ESTATE TAXES:** The calendar year proration shall include all taxes billed or to be billed in the year of the closing. Calendar year tax bills will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing. Proration shall be calculated on a per diem increment and prorated to the date of closing. Seller shall pay for January 1 through the day before closing. If The Property's Principal Residence Exemption ("PRE") status for the calendar year in which the closing occurs will change as a result of the closing, the new PRE status shall be used.

If the current PRE percentage claimed by Seller is greater than zero, Seller represents that such claim by Seller is accurate and lawful. Such representations shall survive the closing. Seller shall defend, indemnify and hold Buyer harmless from any loss, claim or damage resulting from any inaccuracy in such representations. Such loss, claim or damage shall include, but shall not be limited to, any loss, claim or damage resulting subsequently to Buyer from the tax proration calculation made at the time of closing or from the change in PRE status by the municipality for any prior years. Seller shall also be responsible for reasonable actual attorney fees incurred by Buyer in enforcing the provisions of this paragraph, regardless of whether suit is actually filed. The representations and obligations under this paragraph may only be terminated by a separate written document signed by The Parties specifically referring to this paragraph by number.



22. **SPECIAL ASSESSMENTS:** Special assessments levied on The Property shall be handled as follows:
  - A. Existing special assessments, whether there is a lien or not, which can be paid in full and permanently discharged shall be paid by Seller at close of sale.
  - B. Existing special assessments which have ongoing installments and cannot be paid in full and permanently discharged shall be prorated as referenced in the paragraph entitled Prorations. This type of assessment is generally for services or maintenance, including, but not limited to: street lighting, lake weed control, emergency services, etc.
  - C. Special assessments which are levied on The Property after the Effective Date shall be the responsibility of Buyer.
23. **CASUALTY:** In the event that, on or before the closing date, The Property becomes damaged by fire, storm or other casualty, and the cost to repair same is in excess of 10% of the sale price, either Party shall have the right to rescind this Agreement by written notice to the other Party within seven (7) days after receiving notice of such casualty, and Buyer shall be entitled to a refund of any earnest money.
24. **EARNEST MONEY:** Buyer ☐ has delivered to Broker or ☐ shall deliver to Broker within forty-eight (48) hours of the Effective Date \$ 500 to be held with title company (dollars) as earnest money evidencing good faith. Broker is required by law to deposit the earnest money in a separate custodial or trust account within two (2) banking days after this Agreement is signed by The Parties. If the offer made is not accepted or if the sale is not closed due to a failure to satisfy a contingency specified herein for a reason other than default of Buyer, the earnest money shall be refunded to Buyer. The earnest money will be applied to the sale price at closing.
25. **EARNEST MONEY DISPOSITION:** If this Agreement is not closed in the time and manner provided, or if either Party terminates as provided in this Agreement, the disposition of earnest money may be resolved in any of the following ways:
  - A. The Parties may agree in writing to the disposition of the earnest money;
  - B. Either Party may file a lawsuit regarding the disposition of the earnest money;
  - C. Broker may deposit the funds by interpleader with a court of proper jurisdiction. The Parties agree to reimburse Broker for all costs incurred by Broker in filing the interpleader action, including actual attorney's fees, regardless of the outcome; Broker shall continue to hold earnest money until it receives a written agreement signed by The Parties, a final Court Order, or the Broker has deposited the funds with the Court in accordance with an interpleader action. In the event of litigation involving the earnest money, the non-prevailing Party, as determined by the court, shall reimburse the other Party and the Brokers for reasonable actual attorneys' fees and expenses incurred in connection with the litigation.
26. **DEFAULT:** If Buyer defaults, Seller may enforce this Agreement, or may declare Buyer's right to purchase terminated, retain the earnest money, and pursue Seller's legal remedies. If Seller defaults, Buyer may enforce this Agreement, or may demand return of the earnest money and pursue Buyer's legal remedies. Broker(s) have no responsibility for the performance of this Agreement by the Parties.
27. **ALTERNATIVE DISPUTE RESOLUTION:** The Parties acknowledge that they have been informed that any claim or dispute between them related to this Agreement may be mediated or arbitrated if Seller and Buyer agree in a separate writing.
28. **LEGAL COUNSEL:** Buyer acknowledges that Broker(s) have recommended that Buyer retain an attorney to review the marketability of title to The Property. The Parties acknowledge that Broker(s) have recommended that they each retain an attorney to ascertain that the requirements of this Agreement have been met.
29. **DUE ON SALE:** Seller understands that consummation of the sale or transfer of the property described in this Agreement shall not relieve the Seller of any liability that Seller may have under the mortgage(s) to which the property is subject, unless otherwise agreed to by the lender or required by law or regulation.
30. **CONSENT TO FEES:** The Parties acknowledge that Brokers may be offered placement fees, finder's fees or other consideration from others who become involved in the sale of The Property. The Parties hereby grant Brokers permission to receive such fees and/or consideration, unless otherwise agreed in writing.
31. **COUNTERPARTS/SIGNATURES:** This Agreement may be signed in one or more counterparts each of which will be deemed to be an original copy of this Agreement and all of which, when taken together will be deemed to constitute one Agreement. The exchange of copies of this Agreement and signature by personal service, email, facsimile, or other electronic means commonly in use, or any other means permitted by applicable state or federal statute shall constitute effective execution and delivery of this Agreement as to The Parties, and may be used in lieu of the original Agreement for all purposes. Copies shall be deemed to mean any duplicate, reproduction or similar or exact imitation of the original executed Agreement. Signatures of The Parties delivered as described above shall be deemed to be their original signatures for all purposes and shall be deemed valid and binding upon The Parties as if their original signatures, initials and modifications were present on the documents in the handwriting of each party. Neither Buyer nor Seller shall assert the statute of frauds or non-enforceability or validity of this Agreement because of facsimile or similar electronic device copies being used, and both of The Parties specifically waive and relinquish any such defense. Each Party agrees to provide an original signed document to the other upon request.
32. **FUTURE NOTICES:** The Parties authorize Brokers to use the contact information set forth below for notices after the Effective Date of this Agreement. During the term of this Agreement, The Parties agree to notify Brokers of any contact information changes. The contact information set forth below shall not constitute a material part of this Agreement and any addition or modification of the same shall not constitute a rejection of an offer, the creation of a counteroffer or an amendment to this Agreement. **Any future notices required or permitted to be given under this Agreement shall be in writing and signed by the Party giving notice.** Notice shall be deemed to have been given: at the time of personal delivery or; at the time sent by facsimile (with a successful facsimile confirmation sheet) or; at the time sent by electronic mail. Future notices shall be given to Buyer's or Seller's Broker and shall constitute notice given to Buyer or Seller, respectively. If either Party is not represented by a Broker, future notices shall be given to such Party directly.

- 33. CYBER FRAUD:** Buyer and Seller are advised that numerous types of cyber-crimes exist. If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers's license numbers, wire instructions, bank account numbers, etc.), even if that electronic communication appears to be from the Broker, Title Company, or Lender, DO NOT reply until you have verified the authenticity of the email by direct communication with Broker, Title Company, or Lender. DO NOT use telephone numbers provided in the email. Such requests may be part of a scheme to steal funds or use your identity.
- 34. FINAL INSPECTION:** Buyer shall have the right to inspect The Property within seventy-two (72) hours prior to closing to confirm that the real estate is in a condition that is not substantially different from the condition on the Effective Date, or as improved by any agreed-upon corrective action. If substantial differences have occurred, then Buyer shall immediately notify Seller in writing of said differences and Buyer's requested corrective action. The Parties shall be deemed to have settled such differences as of close of sale. Brokers have no responsibility for the condition of The Property.
- 35. FINAL AGREEMENT: THIS AGREEMENT EXPRESSES THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES CONCERNING THIS TRANSACTION AND SUPERCEDES ALL PREVIOUS UNDERSTANDINGS, WHETHER ORAL, WRITTEN OR ELECTRONIC, INCLUDING ANY PROMOTIONAL MATERIALS OR LISTING DESCRIPTIONS. No modifications of this Agreement shall be binding unless in writing and signed by Buyer and Seller.** In signing below, The Parties acknowledge that they have read the Agreement carefully before signing and have received copies of pages 1, 2, 3, 4, 5, & 6 as well as any attachments.
- 36. TIME IS OF THE ESSENCE: TIME IS OF THE ESSENCE WITH RESPECT TO THIS AGREEMENT. TIME LIMITS SHALL BE STRICTLY OBSERVED.**

**37. AUTHORIZATION:** Buyer gives Broker until ~~08/06/2023~~ 08/07/2023, 8:00 ☐ A.M./☒ P.M. to obtain and deliver Seller's written acceptance of Buyer's offer

Selling Broker Office (print): Coldwell Banker Sneller Real Estate  
Broker's License # 6505338164, represents:

(Check only one)

- ☐ Seller Only ☒ Buyer Only  
☐ Seller & Buyer (Disclosed Dual Agent)  
☐ Neither Seller nor Buyer (Transaction Coordinator)

Selling Broker's Agent (print): Ashley Gauthier  
License # 6501372633, represents: (Check only one)

- ☐ Seller Only ☒ Buyer Only #531-DAAB  
☐ Seller & Buyer (Disclosed Dual Agent) #  
☐ Neither Seller nor Buyer (Transaction Coordinator) #  
Phone: 269-779-0521 Fax: \_\_\_\_\_

Email: ashley@snellerrealestate.com

X Kirklynn Caldarona dotloop verified 08/07/23 4:39 PM EDT PFTW-EYRA-CWAC-3MAL Buyer

Kirklynn Caldarona

Print Legal Name (as you wish it to appear on final papers)

X \_\_\_\_\_ Buyer

Print Legal Name (as you wish it to appear on final papers)

Buyer Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**SELLER'S RESPONSE:** (Date/Time) \_\_\_\_\_, ☐ A.M./ ☐ P.M.

**38. THE ABOVE TERMS OF SALE ARE (Check one)**

☒ **ACCEPTED AS OFFERED** ☐ **SUBJECT TO COUNTEROFFER NO.** \_\_\_\_\_

Listing Broker Office Berkshire Hathaway  
Broker's License # \_\_\_\_\_, represents:

(Check only one)

- ☒ Seller Only ☐ Buyer Only  
☐ Seller & Buyer (Disclosed Dual Agent)  
☐ Neither Seller nor Buyer (Transaction Coordinator)

Listing Broker's Agent (print): Steve Revor  
License # \_\_\_\_\_, represents:

(Check only one)

- ☐ Seller Only ☐ Buyer Only  
☐ Neither Seller nor Buyer (Transaction Coordinator)  
☐ Seller & Buyer (Disclosed Dual Agent)

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

X Roberta Morrie dotloop verified 08/07/23 9:54 AM EDT I1H7-CQYM-BU26-GPOV Seller

Roberta A. Morrie  
Print Legal Name (as you wish it to appear on final papers)

X \_\_\_\_\_ Seller

Print Legal Name (as you wish it to appear on final papers)

Seller Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_





# Downtown Infrastructure & Streetscape Project Progress Report

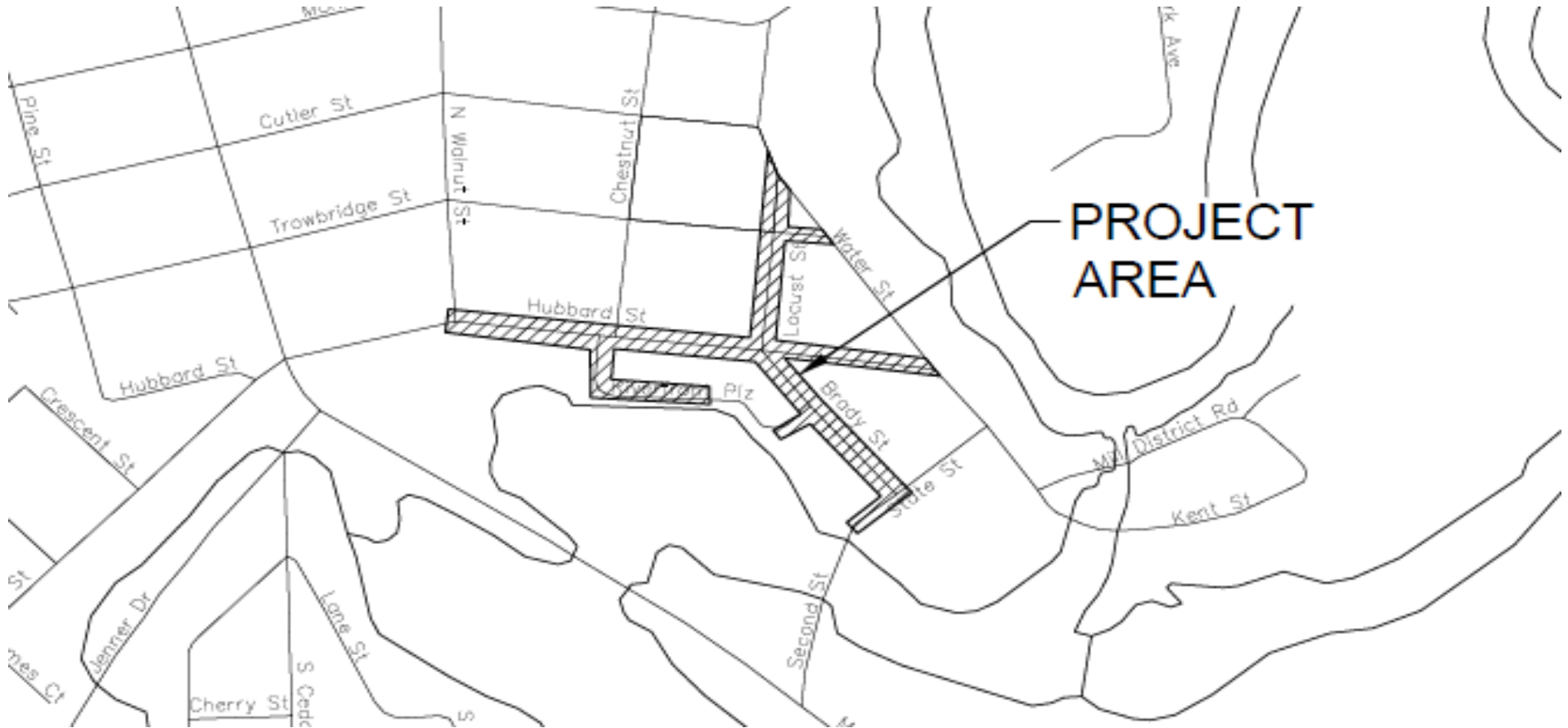


**Monthly Update – July 2023**





## Project Scope



The Downtown Infrastructure and Streetscape Project is a capital improvement project being conducted by the City of Allegan to completely replace all underground utilities, streets, sidewalks, landscaping, streetlights, and other pedestrian amenities along Hubbard Street, Brady Street, and Locust Street in Downtown Allegan. This includes the creation of a public plaza the east end of Trowbridge Street between Locust Street and Water Street.



# Project Schedule

Please note that due to the ongoing issues with subcontractor availability and unforeseen circumstances, the project schedule has become fluid, and the original schedule is no longer correct. The overall completion date is still accomplishable, and the contractors and engineers have no reason to believe we can't meet that deadline as of now.

Each week, typically on Friday, the city posts an update on the project on the city website and the city Facebook page, as such, the status of the project is shared with the public on a weekly basis.

It is anticipated this project will be completed by November of 2023.



# Project Progress

## Work completed during prior month.

- Work continued Brady Street, Hubbard Street and along the Riverfront – Curbs have been installed on Brady and Hubbard (Water Street to Chestnut).
- Staff purchased tables, chairs, and benches; we were able to secure a 5% discount on our purchase.
- A different light pole and post top lantern were selected for the lights; this pole and post top lantern was reviewed by the DDA, Public Spaces and City Council.

## Work planned for upcoming month.

- Sidewalks will be installed on Brady and East Hubbard.
- Conduit will be installed along Brady and Hubbard Street.
- State Street and the 2<sup>nd</sup> Street Bridge will be open.
- Riverfront Sewer work will continue.
- Work will begin on Locust Street.

***NOTE: All work is weather dependent and relies on various material vendors***



## Items of Note

Following are items of note or unplanned issues the project team is working to address or actively tracking:

- Staff have decided against removeable bollards and is looking at other barricade systems off Hubbard and Brady Street to better control vehicle access and protect pedestrians during events on the riverfront.
- Staff are installing video cameras at corners of Trowbridge Street and Locust Street and Hubbard Street and Brady Street.
- The \$250,000 Federal Grant will be reallocated from this project to the resurfacing of the Hubbard Street Parking Lot.



# Project Budget Report

## Payment History by Month

Fund ID	Fund Name	FY22 thru Nov-22	Dec-22 thru June-23	Jul-23	Aug-23	Sep-23	TOTAL
202	Streets (Major)	\$ 1,573	\$ 269,670	\$ 47,279	\$ -	\$ -	\$ 318,522.44
203	Streets (Minor)	\$ 203,521	\$ 889,297	\$ 124,822	\$ -	\$ -	\$ 1,217,640.48
590	Sewer	\$ 96,614	\$ 596,003	\$ 107,578	\$ -	\$ -	\$ 800,195.19
591	Water	\$ 165,123	\$ 677,869	\$ 128,500	\$ -	\$ -	\$ 971,492.22
	<b>TOTAL</b>	<b>\$ 466,832</b>	<b>\$ 2,432,840</b>	<b>\$ 408,179</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 3,307,850.33</b>
							<b>\$ 3,307,850.33</b>

## 2023 DTSS: Expenditures

Vendor	Job Description	Agreement Amount 2022	202 Major Streets	203 Local Streets	590 Sewer	591 Water	Change Orders	Amended Total (A)	Amount Paid to Date (B)	Balance Remaining (A-B)
Abonmarche	DTSS Renderings	\$ 2,000	\$ -	\$ 2,000	\$ -	\$ -	\$ -	\$ 2,000	\$ 2,000	\$ -
Abonmarche	DTSS Redevelopment Plan	\$ 47,000	\$ -	\$ 47,000	\$ -	\$ -	\$ -	\$ 47,000	\$ 47,000	\$ -
Abonmarche	Brady/Locust Survey	\$ 12,440	\$ -	\$ 12,440	\$ -	\$ -	\$ -	\$ 12,440	\$ 12,440	\$ -
Abonmarche	Design Engineering	\$ 278,000	\$ -	\$ 121,422	\$ 60,058	\$ 96,520	\$ -	\$ 278,000	\$ 278,000	\$ -
S&P:	Bond Rating	\$ 13,500	\$ -	\$ 5,805	\$ 2,970	\$ 4,725	\$ -	\$ 13,500	\$ 13,500	\$ -
Dickenson Wright PLLC:	Bond Counsel	\$ 58,750	\$ 1,573	\$ 5,267	\$ 17,000	\$ 34,910	\$ -	\$ 58,750	\$ 58,750	\$ -
MFCI, LLC:	Bond-Finacial Advisors	\$ 48,635	\$ -	\$ 19,950	\$ 12,750	\$ 15,935	\$ -	\$ 48,635	\$ 48,635	\$ -
Kaechele Publications:	Bond Public Notice	\$ 4,940	\$ -	\$ -	\$ 2,470	\$ 2,470	\$ -	\$ 4,940	\$ 4,940	\$ -
Treasury Filing Fees:	Bond Filing	\$ 1,538	\$ -	\$ 538	\$ 400	\$ 600	\$ -	\$ 1,538	\$ 1,538	\$ -
Consumers	Lighting	\$ 300,000	\$ -	\$ 300,000	\$ -	\$ -	\$ -	\$ 300,000	\$ 66,752	\$ 233,248
TBD	Amenities	\$ 200,000	\$ -	\$ 200,000	\$ -	\$ -	\$ -	\$ 200,000	\$ -	\$ 200,000
Other Expenses	USPS, Orbis, EconoSign	\$ 3,804	\$ -	\$ 3,804	\$ -	\$ -	\$ -	\$ 3,804	\$ 3,804	\$ -
Abonmarche	Construction Engineering	\$ 530,800	\$ 44,228	\$ 205,457	\$ 129,780	\$ 155,310	\$ -	\$ 534,775	\$ 208,330	\$ 326,445
Milbocker	Construction	\$ 6,944,419	\$ 832,013	\$ 2,061,123	\$ 1,846,721	\$ 2,204,562	\$ 29,254	\$ 6,973,673	\$ 2,562,162	\$ 4,411,511
	<b>Project Totals</b>	<b>\$ 8,445,826</b>	<b>\$ 877,814</b>	<b>\$ 2,984,805</b>	<b>\$ 2,072,149</b>	<b>\$ 2,515,032</b>	<b>\$ 29,254</b>	<b>\$ 8,479,054</b>	<b>\$ 3,307,850</b>	<b>\$ 5,171,204</b>



# Project Budget Progress Report

1. Invoices received/paid during the current month.

Date	Vendor	Inv#	Inv \$
06/30/23	Abonmarche	147165	\$ 44,152.20
07/31/23	Milbocker	6	\$ 364,026.69

2. Change orders received during the current month.

N/A