

CITY OF MUSKEGON

CITY COMMISSION MEETING

September 24, 2024 @ 5:30 PM

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS, AWARDS, AND PRESENTATIONS:**
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **CONSENT AGENDA:**
 - A. **Approval of Minutes** City Clerk
 - B. **Addendum/Purchase Price: 1192-1194 Pine** Planning
 - C. **Equipment Replacement – Front-end Loader** Public Works
 - D. **MDOT Trunkline Maintenance Contract Renewal** Public Works
 - E. **Concur with CRC Recommendation to Accept Resignation and Make Appointments** City Clerk
 - F. **Sale of 1431 Hoyt** Planning
 - G. **Sale of 1441 Hoyt** Planning
 - H. **Sale of 1441 Leahy** Planning
 - I. **Amendment to the zoning ordinance - Cat Cafés in commercial zones** Planning
 - J. **Amendment to the zoning ordinance - Cat Cafe definition** Planning
 - K. **Contract for Tree Removal Services** Planning

- L. **Nelson School LIHTC Redevelopment Municipal Services Agreement**
Economic Development
- M. **Nelson School LIHTC Redevelopment Contract for Housing Exemption**
Economic Development
- N. **Clay Commons Municipal Services Agreement** Economic Development
- O. **Clay Commons Contract for Housing Exemption** Economic Development
- P. **Spring Street Crossing Municipal Services Agreement** Economic Development
- Q. **Spring Street Crossing Contract for Housing Exemption** Economic Development
- R. **Sale of 32 W. Western Avenue to Spire Development** Economic Development
- S. **Berkshire Spring Street LIHTC Municipal Services Agreement** Economic Development
- T. **Berkshire Spring Street Contract for Housing Exemption (PILOT Agreement)** Economic Development
- U. **Froebel School Project Updated Municipal Services Agreement**
Economic Development
- V. **Froebel School Updated Contract for Housing Exemption** Economic Development
- W. **Lighthouse Lofts Municipal Service Agreement** Economic Development
- X. **Lighthouse Lofts Contract for Housing Exemption** Economic Development

☐ **PUBLIC HEARINGS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC COMMENT ON NON-AGENDA ITEMS:**

- ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
- ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
- ▶ Submit the form to the City Clerk.
- ▶ Be recognized by the Chair.
- ▶ Step forward to the microphone.
- ▶ State name and address.

- ▶ Limit of 3 minutes to address the Commission.

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

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

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

www.shorelinecity.com

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

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

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Approval of Minutes															
Submitted by: Ann Meisch, City Clerk	Department: City Clerk															
Brief Summary: To approve minutes of the September 9, 2024, Worksession/City Commission Meeting.																
Detailed Summary & Background:																
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u>																
Amount Requested:	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X									
Yes		No		N/A	X											
Fund(s) or Account(s):	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X									
Yes		No		N/A	X											
Recommended Motion: Approval of the minutes.																
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td></td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr><tr><td>Other Division Heads</td><td></td><td></td></tr><tr><td>Communication</td><td></td><td></td></tr><tr><td>Legal Review</td><td></td><td></td></tr></table>	Immediate Division Head			Information Technology			Other Division Heads			Communication			Legal Review			Guest(s) Invited / Presenting: No
Immediate Division Head																
Information Technology																
Other Division Heads																
Communication																
Legal Review																

CITY OF MUSKEGON

WORKSESSION/CITY COMMISSION

MEETING

September 9, 2024 @ 5:30 PM
MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440
MINUTES

CALL TO ORDER

The Worksession/Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 PM, Monday, September 9, 2024. Mayor Johnson opened the meeting with a moment of silence, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL

Present: Mayor Ken Johnson, Vice Mayor Rebecca St.Clair, Commissioners Willie German, Jr., Rachel Gorman, Katrina Kochin, Jay Kilgo, and Destinee Keener, City Manager Jonathan Seyferth, City Attorney John Schrier, and City Clerk Ann Marie Meisch

2024-79 HONORS, AWARDS, AND PRESENTATIONS

A. Recognize Joshua Fors - Michigan Sexton of the Year Manager's Office

The City Commission recognized Joshua Fors who has been honored with the prestigious title of Michigan Sexton of the Year.

B. Regional Transit Authority Articles of Incorporation Manager's Office

Staff and a guest from the Muskegon Area Transit System will be presenting the proposed Articles of Incorporation for the new regional transit authority. In November 2023, the City Commission approved a resolution of intent to join other municipalities in forming a regional transit authority. The first formal step for the group is to establish Articles of Incorporation. The legislative body of each member agency will need to approve the articles for the authority to proceed forward with developing bylaws and seeking funding. Deputy City

Manager LeighAnn Mikesell and Transit Systems Manager Jim Koens explained the process to create a public transit authority in our community and answered questions.

C. Port Development Conversation Manager's Office

Representatives from Mart Dock will present outlines of a proposal for port development in Muskegon, which includes increased public access along the eastern edge of Muskegon Lake and downtown. Several years ago, the City of Muskegon and Mart Dock began discussions on the possibility of a "land swap" between the two entities, which would include the property at Fisherman's Landing (city property) and what's referred to as the Third Street Pier (Mart Dock property). For various reasons, those conversations did not result in a deal.

Recently, City staff and the Mart Dock have again started these conversations, but with a broader focus that looks at opening additional Muskegon Lake access on the east side of the lake (a concept of areas that could be used for east-side public access is available - **no details have been finalized and this is for conversation example only**) and a complete picture of what downtown access could look like from Terrace Point west to GVSU's AWRI facility (Mart Dock will present on this concept Monday).

This conversation relates to the more extensive waterfront development conversations that started following the City's completion of its master planning process last year. Multiple parties are involved in these conversations, including Muskegon County, WMSRDC, Parkland Properties, and the Muskegon Lakeshore Chamber of Commerce.

A key part of this conversation is relocating the current Mart Dock port operations to the Fisherman's Landing site and completely redeveloping the Mark Dock into mixed uses with extensive public access. Mark Dock envisions containerized operations on the Fisherman's Landing site.

A factor that has changed since the City's initial conversation with the Mart Dock is the possibility of acquiring the Verplank Property to the east of Fisherman's Landing and greatly expanding public access along the south branch of the Muskegon River and out onto Muskegon Lake (this is often referred to as an expansion of Richards Park because of its proximity to and likely connection to Richard Park if the development were to occur).

Although many broad strokes are noted here and have been discussed, we're closer to the beginning of this conversation rather than the end. There will be a plan and opportunity for public feedback, especially as it relates to new access along the east end of Muskegon Lake.

If the City Commission is comfortable with what is discussed at this meeting, City staff will begin drafting a formal agreement with Mark Dock that will formalize the logistics of the process to possibly set up a land transfer between the two parties and key milestones that will be inflection points. **The objective is to produce an agreement establishing a road map for how public access would be maintained and increased and outline the City's commitment to actively partner with Mark Dock in applying for Federal Port Development Grants.** These grants would be critical in financing any redevelopment of Muskegon's port.

Mart Dock will attend the meeting on Monday to present some of their ideas and make some commitments about how they are willing to move the project forward.

Key Topics for Discussion on Monday:

- Mart Dock's vision for its property in the future
- City staff discussing how public access on the east side of the lake could be expanded to the public as a result of this development
- Mart Dock's ideas related to a port collaborative on Muskegon Lake and how that could positively impact the community (and who, potentially, would be included in that collaborative)
- Guarantees of additional public access at Third Street even if federal grants are not successfully obtained

City Manager Jonathan Seyferth and Chuck Canestraight, President at Port City Marine Companies, explained the item and asked the Commission for questions and feedback.

D. Nelson House Purchase and Development Agreement Planning

Discussion on the Nelson House purchase and development agreement. Jamie Pesch, Planner III, explained the request for bids process for the sale of the Nelson House.

E. Short-Term Rental - Final Ordinance Presentation Manager's Office

Following feedback from the City Commission and the public, the staff has updated the proposed STR Ordinance. In August, the staff presented a proposed ordinance change focused on short-term rentals (STRs) in the City of Muskegon. The proposed ordinance has been updated following feedback from the City Commission and the public.

The staff still proposes separating the City into zones based on Federal Census Tracts and capping STRs within each zone to 4% of the total housing stock. Staff also recommends that the DDA and Lakeside BID districts be pulled out of these

tracts to encourage short-term rentals in these zones. This will adjust the Lakeside and North Nelson/Jackson Hill tract caps. Updated caps for each zone/tract are available. I should note that by removing the Lakeside BID from the cap, the Lakeside Tract went from having more STRs than the cap would allow to fewer and opening up seven (7) additional licenses within that census tract.

Taking into consideration additional feedback, the staff is also recommending that current properties with active STR licenses be able to be sold and have their STR licenses transferred to the new owner - if the new owner can meet STR application requirements. Additionally, the new owner must apply for their STR license within 60 days of the purchase of their property, or they forfeit their right to an STR license.

The staff plans to hold a special Planning Commission meeting the week of September 16 to hold a public hearing on the STR ordinance and then bring the ordinance to the City Commission for final consideration on October 8, 2024.

PUBLIC COMMENT ON AGENDA ITEMS

No public comments were made.

2024-80 CONSENT AGENDA

A. Approval of Minutes City Clerk

Approve minutes of the August 27, 2024, City Commission Meeting.

STAFF RECOMMENDATION: Approval of the minutes.

B. Nims Water Tower Cellular Antenna Lease Renewal Public Works

Staff requests authorization to enter into a 10-year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Nims water tower for a cellular antenna and related equipment. Commission authorized Maralat, LLC, a cellular antenna industry consultant, to enter into negotiations on the City's behalf with AT&T for renewal of their lease on the Nims water tower. Staff, legal counsel and Maralat have been working with AT&T to finalize the terms of a lease extension and have reached an agreement as presented in the lease agreement. The table below summarizes the terms in both the prior lease and this proposed extension.

Component	Prior Lease	Proposed Renewal
Rental Rate	\$4,938.77	\$4,850
Annual Escalation	3%	3%
Commencement Date	N/A	February 1, 2024

Termination Date	September 30, 2018	January 31, 2059
Termination Fee (Initial 10-Year Term)	None	100% of Rent for 5 Years, then 50%
Equipment Upgrade Fee	None	\$325 per Month Per New Antenna
Administrative Signing Bonus	None	\$7,500

The proposed lease is the same as the Marshall water tower extension included on tonight's agenda. Although the rental rate is slightly decreased at the start of the lease, Maralat ensures staff that it reflects the best available rates and terms available to the City and the lease includes other items such as a termination fee, an upgrade fee and an administrative signing bonus that make the slight rent reduction less impactful overall, and the extension continues the 3% annual escalator.

STAFF RECOMMENDATION: Authorize staff to enter into a 10-year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Nims water tower for a cellular antenna and related equipment.

C. Marshall Water Tower Cellular Antenna Lease Renewal Public Works

Staff requests authorization to enter into a 10-year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Marshall water tower for a cellular antenna and related equipment.

Commission authorized Maralat, LLC, a cellular antenna industry consultant, to enter into negotiations on the City's behalf with AT&T for renewal of their lease on the Marshall water tower. Staff, legal counsel and Maralat have been working with AT&T to finalize the terms of a lease extension and have reached an agreement as presented in the lease agreement. The table below summarizes the terms in both the prior lease and this proposed extension.

Component	Prior Lease	Proposed Renewal
Rental Rate	\$4,938.77	\$4,850
Annual Escalation	3%	3%
Commencement Date	N/A	February 1, 2024
Termination Date	September 30, 2018	January 31, 2059
Termination Fee (Initial 10-Year Term)	None	100% of Rent for 5 Years, then 50%
Equipment Upgrade Fee	None	\$325 per Month Per New Antenna

Administrative Signing Bonus None \$7,500

The proposed lease is the same as the Nims water tower extension included on tonight's agenda. Although the rental rate is slightly decreased at the start of the lease, Maralat ensures staff that it reflects the best available rates and terms available to the City and the lease includes other items such as a termination fee, an upgrade fee and an administrative signing bonus that make the slight rent reduction less impactful overall, and the extension continues the 3% annual escalator.

STAFF RECOMMENDATION: Authorize staff to enter into a 10-year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Marshall water tower for a cellular antenna and related equipment.

D. Contract Award - 2024 Mill and Resurfacing Project Public Works

Staff requests approval to enter into a contract with Asphalt Paving Inc. in the amount of \$189,324.70 and to approve Change Order No. 1 in the amount of \$29,556 for a total award of \$218,880.70 for the repaving work on Irwin Ave., Wood St., Beach St., Glen/McGraft Ave., and Allen Ave. Staff reviewed several areas of major streets in poor condition and solicited bids for repaving the following streets:

- Wood St.: From Irwin Ave. north to Spring St. (approx. 225').
- Irwin Ave.: From Approx. 300' west of Wood St. to approx. 330' east of Wood St.
- Beach Street: From the "fork" in the road near Margaret Drake Elliot Park northerly approx. 1,125'
- Glen/McGraft: From Hackley Ave. to Addison St. (approx. 2,800').
- Allen Ave.: From Creston St. to Home St. (approx. 525').

City/DPW staff are planning to pave Allen Avenue, but the contractor will do the preparatory work.

Asphalt Paving, Inc. (API) was the low bidder in the amount of \$189,324.70, with details shown on the bid tab. In addition to the award of the contract as originally bid, staff is requesting authorization for approval of the Change Order for an additional amount of \$29,556.00 to increase the area to be milled on the Glen/McGraft from Hackley Ave. to Addison St. by 1,960 SYD's and the amount of paving by 250 tons of asphalt. Due to the favorable prices received, staff would like to widen the area to be milled and paved on Glen/McGraft.

STAFF RECOMMENDATION: Authorize staff to enter into a contract with Asphalt Paving Inc. in the amount of \$189,324.70 and to approve Change Order No. 1 in the amount of \$29,556 for a total award of \$218,880.70 for the repaving work on Irwin Ave., Wood St., Beach St., Glen/McGraft Ave., and Allen Ave.

E. Amendment for Engineering Services - Olthoff Drive Extension Project

Public Works

Hubbell, Roth & Clark, Inc. (HRC) performed the design and construction engineering for the Olthoff Drive Extension project. They have requested an additional \$30,600 to be added to their contract with the City as described herein. HRC provided Design and Construction Engineering services for the Olthoff Drive Extension project. There were various additional services provided, including redesigning the sanitary sewer location, adjusting the road grades to minimize coordination with the neighboring prison, and construction duration lasting 15 weeks versus the originally proposed 8 weeks. Construction was originally planned to be completed during the 2021 construction season but ended up being completed primarily in 2023 with the final paving completed in 2024. These changes were at the request of the primary tenant of the industrial park expansion/road extension. These costs will be paid for by a combination of MEDC grant funds, MDOT grant funds, and water/sewer funds. This is not a specifically budgeted expense, but staff is confident the non-grant portions will fit within the existing budgets. Staff recommends approval of the request.

STAFF RECOMMENDATION: Authorize staff to approve the requested amendment from HRC, Inc. in the amount of \$30,600.

F. Washwater Pump Replacement Valves DPW- Water Filtration Plan

Staff is requesting authorization to contract with Northern Boiler Mechanical Contractors for valve replacements on two Washwater Pump's located at the City Water Filtration Plant. The Filtration plant has 3 washwater pumps that are critical to the filtration process. These pumps allow us to wash the filters as they build up filtered sediment, extending the life of the filter media by back-flushing treated water through the filter media. Pumps #2 and #3 are original to the 1936 construction of the filtration plant, including their foot and isolation valves. The "foot" valve sits down in the finished water reservoir at the point where the washwater pump pulls water from the reservoir for washing. The foot valve on washwater pump #3 has failed and needs replacement; currently washwater Pump #3 is out of service, reducing the plant's redundancy to properly operate filters. The plan included with this item shows the foot valve and other proposed work as detailed below.

Staff solicited bids for the replacement of washwater pump #3's foot valve. As part of the bid process, staff requested an alternate bid to replace both foot valves, on washwater pump #2 as well as #3. It is reasonable to assume the washwater pump #2 foot valve is not far behind #3 in terms of failure. With the extent of work needed, it makes the most economic sense to replace both at the same time to ensure long service life for both pieces of critical infrastructure.

Furthermore, the addition of a check valve after the pump discharge as well as

a replaced isolation valve were included in the pricing requested. The check valve will prevent backwash water from flowing into the drinking water reservoir in the event of a foot valve failure. The aging isolation valve has proven to be difficult to operate and is in need of replacement, and with this project it can be replaced in a location that will allow easy access for future repairs.

A proposal for bids was posted and 2 mechanical contractors bids were received, Northern Boiler and Franklin Holwerda Company. Staff recommends this project be awarded to Northern Boiler Mechanical Contractors for the work described above based on their low bid and their experience with similar work. The bid tab and other documents are included. This work fits within the filter plant capital improvement budget, but it will need to take the place of other work shown in the plan due to its urgency.

STAFF RECOMMENDATION: Authorize staff to contract with Northern Boiler Mechanical Contractors for \$155,729 to perform foot, isolation, and check valve replacements at the Water Filtration Plant.

G. Request to amend the planned unit development (PUD) at 3400, 3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street (the Docks). SECOND READING Planning

The plans have been amended to develop around areas that have been declared as established wetlands. There will be a total of 240 residential units and a community building with retail/restaurant space. The Planning Commission unanimously recommended approval of the amended PUD with the following conditions:

1. The applicant receives a stormwater permit from the Engineering Department.
2. All utility plans are reviewed and approved by the Engineering Department
3. Lane widths of streets are reduced to 9 or 10 feet subject to the Engineering Department.
4. Bulb outs are eliminated on road A.
5. Road C will be connected back to road B.
6. The parking lot to the southern marina parking lot will be revised as discussed.
7. Landscaping areas inside of parking areas and streets will be privately maintained.
8. A public/private street map will be provided and describe the ownership as discussed with all privately-owned roadways being publicly accessible.
9. A landscaping plan is approved by the Planning Department.

Conditions 4, 5, and 6 have been addressed and reflected on the revised plans

in the packet.

STAFF RECOMMENDATION: To approve the request to amend the PUD with the following conditions:

1. The applicant receives a stormwater permit from the Engineering Department.
2. All utility plans are reviewed and approved by the Engineering Department.
3. Lane widths of streets are reduced to 9 or 10 feet subject to the Engineering Department.
4. Landscaping areas inside of parking areas and streets will be privately maintained.
5. A public/private street map will be provided and describe the ownership as discussed with all privately-owned roadways being publicly accessible.
6. A landscaping plan is approved by the Planning Department.
7. That on-street parking, inclusive of handicap parking, be placed to the north of the structural retaining wall at public road E's final northerly bend.

H. Rezoning of 349 W Webster Ave from Form Based Code, Urban Residential (FBC, UR) to Form Based Code, Neighborhood Core (FBC, NC). SECOND READING Planning

The Planning Commission unanimously recommended in favor of the request at their August meeting. This property is the former location of the Muskegon Public Schools Administration building. It has been privately owned since 2021. The applicant is requesting a rezoning to allow the building to be converted into a hotel, with retail and other mixed-uses. There were no public comments given at the public hearing.

STAFF RECOMMENDATION: I move to approve the request to rezone the property at 349 W. Webster Ave. from Form Based Code, Urban Residential to Form Based Code, Neighborhood Core.

I. Rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1). SECOND READING Planning

The Planning Commission unanimously recommended approval of the request at their August meeting. The property is the site of the former Muskegon General Hospital and is still zoned MC, Medical Care. The site measures just under 26 acres. The applicant is seeking a rezoning to RM-1, Low-Density Multi-Family Residential to allow for a 144-unit "work force" apartment development. The plans include the demolition of the existing hospital buildings. The applicant would utilize about 14 acres of the 26 acre site. The Planning Commission recommended in favor of the rezoning and also approved the site plan, contingent upon the City Commission approving the rezoning.

STAFF RECOMMENDATION: I move to approve the rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1).

Motion by Vice Mayor St.Clair, second by Commissioner Gorman, to approve the Consent Agenda as presented.

ROLL VOTE: Ayes: Keener, Gorman, Kochin, St.Clair, and Johnson
Nays: None

MOTION PASSES

ANY OTHER BUSINESS

DPW Director Dan VanderHeide stated that on Laketon Avenue east of Seaway there is a broken sewer lateral. Laketon will be closing, both directions, starting September 10th.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Public comments received.

ADJOURNMENT

The City Commission meeting adjourned at 8:10 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Addendum/Purchase Price: 1192-1194 Pine												
Submitted by: Samantha Pulos, Code Coordinator	Department: Planning												
Brief Summary: Staff is requesting approval of a purchase agreement addendum to reduce the price of 1192-1194 Pine from \$350,000.00 to \$310,000.00.													
Detailed Summary & Background: 1192-1194 Pine had a foundation inspection performed by two local foundation contractors/specialists. Due to the shifting and age of the homes, potential issues were identified. The purchase price of the homes was reduced to reflect that.													
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Key Focus Area: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business													
Amount Requested: n/a	Budgeted Item: <table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>N/A</td> <td>x</td> <td></td> </tr> </table>	Yes		No		N/A	x						
Yes		No		N/A	x								
Fund(s) or Account(s): n/a	Budget Amendment Needed: <table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>N/A</td> <td>x</td> <td></td> </tr> </table>	Yes		No		N/A	x						
Yes		No		N/A	x								
Recommended Motion: To approve the Purchase Agreement Amendment for 1192-1194 Pine to reduce the price to \$310,000 and authorize the Code Coordinator, Samantha Pulos, to sign.													
Approvals: <table border="1"> <tr> <td>Immediate Division Head</td> <td></td> <td></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td></td> <td></td> </tr> <tr> <td>Communication</td> <td></td> <td></td> </tr> </table>	Immediate Division Head			Information Technology			Other Division Heads			Communication			Guest(s) Invited / Presenting: No
Immediate Division Head													
Information Technology													
Other Division Heads													
Communication													

Legal Review			
--------------	--	--	--

WEST MICHIGAN REGIONAL
ADDENDUM TO PURCHASE AGREEMENT

MLS #	24029065	Date:	09/08/2024	(time)		
Selling Office	GREENRIDGE REALTY INC.-MUSKEGON	REALTOR®	Phone	231-343-8621	Email	kpittman@greenridge.com
Listing Office	Coldwell Banker Woodland Schmidt Muskegon	REALTOR®	Phone	231-343-9966	Email	brenda.skujins@cbgreatlakes.com

1. Addendum # 5 to Purchase Agreement dated 07/22/2024 covering property at 1192 and 1194 Pine St, Muskegon, MI 49442

2. This Addendum shall be an integral part of the Purchase Agreement, which is amended as follows:
The buyer submits her best and final offer, with a purchase price of \$310,000.00 (Three Hundred Ten Thousand dollars and zero cents).

3. The ☒ Seller ☐ Buyer (check one) gives the above-named REALTOR® 2 days to obtain the written acceptance of this Addendum to the Purchase Agreement. If accepted, this Addendum will constitute a binding change to the Purchase Agreement.

4. **RECEIPT IS ACKNOWLEDGED BY BUYER** of a copy of this Agreement.

Date 09/08/2024

X EBONY CRONE dotloop verified 09/08/24 5:56 PM CDT AZQ2-6UK7-8ISD-VSPF Buyer
(Note: Please sign as you wish your name to appear on final papers.)

X Buyer
(Note: Please sign as you wish your name to appear on final papers.)

5. **RECEIPT IS ACKNOWLEDGED BY SELLER** of a copy of this Agreement.

Date

X Sam Pulos dotloop verified 09/09/24 11:30 AM EDT YIAA-AUEQ-VSCM-GH3E Seller
(Note: Please sign as you wish your name to appear on final papers.)

X Seller
(Note: Please sign as you wish your name to appear on final papers.)



WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE: 07/22/2024 (time) MLS # 24029065
 SELLING OFFICE: GREENRIDGE REALTY INC.-MUSKEGON BROKER LIC.#: 6505179283 REALTOR® PHONE: 231-830-3098
 LISTING OFFICE: Coldwell Banker Woodland Schmidt Muskegon REALTOR® PHONE: 231-343-9966

- Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, 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. Any reference to "time" refers to local time.
- Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the *Disclosure Regarding Real Estate Agency Relationships*. The selling licensee is acting as (choose one):
☐ Agent/Subagent of Seller ☒ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator
 Primary Selling Agent Name: THERESA (KAY) PITTMAN Email: kpittman@greenridge.com Lic.#: 6501307466
 Alternate Selling Agent Name: Email: Lic.#:
- Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)
☒ Buyer has received the *Seller's Disclosure Statement*, dated 05/21/2024.
☐ Buyer has not received the *Seller's Disclosure Statement*. Buyer may terminate this Agreement, in writing, any time prior to receipt of the *Seller's Disclosure Statement*. Once Buyer has received the *Seller's Disclosure Statement*, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions:
☐ Seller is exempt from the requirements of the Seller Disclosure Act.
- Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.
- Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of Muskegon, County of Muskegon, Michigan, commonly known as (insert mailing address: street/city/state/zip code)
 1192-1194 Pine Street, Muskegon, MI 49442
 with the following legal description and tax parcel ID numbers:

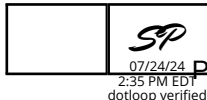
CITY OF MUSKEGON REVISED PLAT OF 1903 N 1/2 LOT 2 BLK 245 and CITY OF MUSKEGON REVISED PLAT OF 1903 S 1/2 LOT 2 BLK 245

- PP# 24205245000200
- The following paragraph applies only if the Premises include unplatted land:**
 Seller agrees to grant Buyer at closing the right to make (insert number) 0 division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before N/A of the proposed division to create the Premises.
- Purchase Price:** Buyer offers to buy the Property for the sum of \$ 350,000.00 U.S. Dollars
 three hundred fifty thousand
 - Seller Concessions**, if any: NONE

- Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
 SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.
 If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.
☐ CASH. The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.
☒ NEW MORTGAGE. The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a CONVENTIONAL type 30 (year) mortgage in the amount of 85 % of the Purchase Price bearing interest at a rate not to exceed 8.0 % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☒ Buyer will agree to pay an amount not to exceed \$ 0.0 representing repairs required as a condition of financing. Buyer ☐ agrees ☒ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from



Buyer's Initials



Seller's Initials

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

N/A

☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$ N/A upon execution and delivery of a N/A form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$ N/A will be payable in monthly installments of \$ N/A or more including interest at N/A % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable N/A months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

N/A

☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$ N/A) between the Purchase Price above provided and the unpaid balance (approximately \$ N/A) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ OTHER: N/A

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

- ☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.
- ☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

- ☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

ALL ITEMS LISTED ON THE MLS DATA DESCRIPTION IN EACH UNIT (A/C UNIT, DISHWASHER, RANGE/OVEN, REFRIGERATOR, WASHER AND DRYER.)

but does not include:

PERSONAL ITEMS

1192-1194 Pine Street, Muskegon, MI 49442
Subject Property Address/Description

07/22/2024
Date Time

11. **Heating and Cooking Fuels:** Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

N/A

12. **Assessments (choose one):**

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required for future connection to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. **Property Taxes:** Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

N/A

14. **Well/Septic:** Within ten (10) days after the Effective Date, (choose one) ☐ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other:

15. **Inspections & Investigations:**

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 10 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

1192-1194 Pine Street, Muskegon, MI 49442
 Subject Property Address/Description

07/22/2024
 Date

Time

accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions:

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions:

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☐ Buyer or ☐ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☒ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

Buyer will accept exciting survey from seller if there's one.

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 08/30/2024. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee.** Exceptions:

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At a.m. ☐ p.m. on the day **after** completion of the closing of the sale, during which time Seller will have the privilege to occupy the Property and hereby agrees to pay Buyer \$ as an occupancy fee for this period payable at closing, WITHOUT PRORATION. Payment shall be made in the form of cash or certified funds.

1192-1194 Pine Street, Muskegon, MI 49442
Subject Property Address/Description

07/22/2024
Date

Time

For purposes of determining possession, the transaction will be considered closed once all necessary documents have been signed and received by escrow agent and funds have been received by the escrow agent.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ _____ per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Seller shall also be responsible for snow removal and/or landscape maintenance. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer.

In the event of possession by Seller after close, Buyer and Seller ☐ agree ☐ do not agree to sign the West Michigan Regional Temporary Occupancy Addendum to the Purchase Agreement. If signed, that Addendum shall become an integral part of this Agreement.

Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until 4:00 P.M. (time) on 07/23/2024 (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$ 3,500.00 shall be submitted to CHICAGO TITLE (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Buyer is entitled to a refund of the Earnest Money Deposit. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.

25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.

26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.

27. **Other Provisions:**

This offer is contingent on buyers' satisfaction with inspections.

28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.

29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.

1192-1194 Pine Street, Muskegon, MI 49442
Subject Property Address/Description

07/22/2024
Date Time

30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' 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.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address 24444 MEYER AVE. SW, #1, WYOMING, MI 49419 X   Buyer
Buyer 1 Phone: (Res.) 616-930-6944 (Bus.) _____ EBONY CRANE
Print name as you want it to appear on documents.
Buyer 2 Address _____ X _____ Buyer
Buyer 2 Phone: (Res.) _____ (Bus.) _____
Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☐ As written. ☒ As written except:
The conveyance will be via Quit Claim Deed from the City of Muskegon. All other conditions remain the same.

Counteroffer, if any, expires 07/25/2024, at 10am (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated 05/21/2024 (choose one): ☒ Yes ☐ No.
Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. **Listing Office Address:** 380 W. WESTERN, SUITE 101, MUSKEGON, 49440 Listing Broker License # 6505157435
Listing Agent Name: Brenda Nyblade Skujins Listing Agent License # 6501403748

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time):  
Print name as you want it to appear on documents. Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

X (Seller's Signature, Date, Time): _____
Print name as you want it to appear on documents. Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Seller's Address: _____ Seller's Phone (Res.) _____ (Bus.) _____
* If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time): _____
X (Buyer's Signature, Date, Time): _____

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counteroffer.

X (Seller's Signature, Date, Time): _____
X (Seller's Signature, Date, Time): _____

1192-1194 Pine Street, Muskegon, MI 49442 07/22/2024 _____
Subject Property Address/Description Date Time

Project Manager: Bryan Foster

License: #2102212972

1518 Steele Ave SW Grand Rapids, MI 49507

Cell: 616-335-0364 Office: 616-377-8111

foster@foundationspecialistmi.com

Bill To

Ebony Crane

(616) 930-6944

1194 Pine St

Muskegon, MI 49442

craneeb@gmail.com

Number

2080

Date

Aug 16, 2024

Customer #

Terms

Ship Via

Tentative Installation Date:

Qty	Description	Ext	Unit	Photo
21	Basement/(includes base) HD Galvanized Support Post Install steel adjustable support post and Install a structural base for support post. The support post will stabilize the structure or FS can attempt to lift the foundation/beam and support the load above. Adjustments of the support posts will have to be done if it appears there is any sagging of the beams. Lift is not guaranteed. This is not included in the price of the job. A service call of minimum of \$199.00 (depending on number of adjustments) will be charged to the homeowner if they want Foundation Specialist LLC, to come out and adjust the posts.	\$25,095.00	\$1,195.00	
14	CS/ Galvanized Support Post (existing pad) Install steel adjustable support post on existing base/pad. The support post will stabilize the structure or FS can attempt to lift the foundation/beam and support the load above. Adjustments of the support posts will have to be done if it appears there is any sagging of the beams. Lift is not guaranteed. This is not included in the price of the job. A service call of minimum of \$199.00 (depending on number of adjustments) will be charged to the homeowner if they want Foundation Specialist LLC, to come out and adjust the posts.	\$14,700.00	\$1,050.00	
166	Steel i Support Beam Install new coated 4in steel support I beam.	\$13,114.00	\$79.00	
7	Sister Floor Joist Sister floor joist to repair damaged boards under floor. Customer is responsible to remove all electrical, plumbing, duct work, etc to allow access to install new floor joist. Customer also responsible to replace lines once work is complete.	\$1,680.00	\$240.00	

Total (1227)

Project Manager: Bryan Foster

License: #2102212972

1518 Steele Ave SW Grand Rapids, MI 49507

Cell: 616-335-0364 Office: 616-377-8111

foster@foundationspecialistmi.com

Bill To

Ebony Crane

(616) 930-6944

1194 Pine St

Muskegon, MI 49442

craneeb@gmail.com

Number

2080

Date

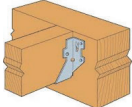
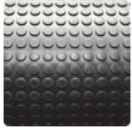
Aug 16, 2024

Customer #

Terms

Ship Via

Tentative Installation Date:

Qty	Description	Ext	Unit	Photo
	Floor Joist Dimensions:			
9	Joist Hangers/Custom Angle Bracket Joist hanger/angle bracket installed as needed. Bring double joists hangers too.	\$270.00	\$30.00	
1	Notes Unable to access the crawl space areas. Plywood needs to be removed to gain access. Not required but maybe needed is 3 additional support post and 14 of beam along the stairs where previous work as been done.	\$0.00	\$0.00	
504	Dimpled Drainage Matting Dimpled membrane used with encapsulation liner to divert water from wall into drainage system below.	\$831.60	\$1.65	
504	20 Mil Crawl Space Liner Crawl Space Encapsulation -20 Mil cross woven polyethylene -Sealed seams and penetrations -25 year warranty against rips and tears. Customer to move items from work area Site Access and Readiness: Customer is responsible for moving all items 4ft to 5ft away from the areas where work will be performed. Customer also must clear a 4ft pathway from the stairs that allows access to areas where work will be performed.	\$3,301.20	\$6.55	 
		Total (1227)		

Project Manager: Bryan Foster

License: #2102212972

1518 Steele Ave SW Grand Rapids, MI 49507

Cell: 616-335-0364 Office: 616-377-8111

foster@foundationspecialistmi.com

Bill To

Ebony Crane

(616) 930-6944

1194 Pine St

Muskegon, MI 49442

craneeb@gmail.com

Number

2080

Date

Aug 16, 2024

Customer #

Terms

Ship Via

Tentative Installation Date:

Qty	Description	Ext	Unit	Photo
	If all necessary items are not moved from the necessary areas, Foundation Specialist may elect to leave the jobsite and return once the items have been moved. Customer will incur a \$400 trip charge if this occurs. Customer may, alternatively, elect to have FS employees move the items necessary to complete the work. Neither Foundation Specialist, nor FS employees, will be held liable for ANY DAMAGES TO UNMOVED ITEMS and Customer will be assessed \$100 per hour per person for this additional service. A minimum of 1 hour per person will be charged. In cases of STRUCTURAL REPAIR, Customer must move all items 10ft away from areas in which work will be performed and clear a 4ft path to provide access to the work areas. HD Stabilizer Galvanized Support Post Warranty In areas where relevant work was performed by Foundation Specialist, the Contractor hereby warrants that Galvanized Support Posts will stop further appreciable settlement of the repaired structure for 25 years from the date of installation. Also included is a second 25 year warranty from the manufacturer. In the event of a problem, Foundation Specialist will provide the labor and materials, at no cost to Customer, to correct problem(s) with the Galvanized Support Posts. Areas that are not supported entirely from corner to corner, covering the entire basement, as performed by Contractor are not under warranty. Galvanized Support Posts are under warranty only to stabilize the affected structure from appreciable settlement. If Customer desires further movement of the structure, the project manager will need to be contacted for a new proposal. The cost of adjustments is not included in this proposal or warranty, but adjustments are available from Foundation Specialist at an additional charge. Please consult the project manager for costs of additional adjustments.			
Total (1227)				

Project Manager: Bryan Foster

License: #2102212972

1518 Steele Ave SW Grand Rapids, MI 49507

Cell: 616-335-0364 Office: 616-377-8111

foster@foundationspecialistmi.com

Bill To

Ebony Crane

(616) 930-6944

1194 Pine St

Muskegon, MI 49442

craneeb@gmail.com

Number

2080

Date

Aug 16, 2024

Customer #

Terms

Ship Via

Tentative Installation Date:

Qty	Description	Ext	Unit	Photo
	Crawl Space Warranty The crawl space liner comes with a 25-year transferable warranty that covers rips and tears only.			
1	Deposit A deposit of 50% is required for scheduling the work to be performed. After 3 business days the deposit will become non-refundable and will be held as a credit towards any Foundation Specialist LLC, services. Final payment is due upon completion of Job.	\$0.00	\$0.00	

Total (1227)

\$58,991.80

Thank you for your time and valued business.

For more information feel free to check us out @
www.foundationspecialistmi.com

Your Right To Cancel / Terms & Conditions

Terms & Conditions: Bid valid for 30 days.

Your Right to Cancel: If Homeowner ("You") entered into this Contract as a result of, or in connection with, a salesman's direct contact with or call to You at Your residence without You soliciting the contract or call, then You have a legal right to void the Contract or sale by notifying us within (3) business days from accepting the proposal with a full refund of Your deposit. After (3) business days Foundation Specialist ("FS") will charge a minimum fee of 15-25% of the total job cost. **How To Cancel:** If You decide to cancel this transaction, You may do so by notifying us in writing at Foundation Specialist, 1518 Steele Ave SW, Grand Rapids, MI 49507. You may use any written statement that is signed and dated by all contracting parties clearly stating Your intentions to cancel. Written notice of Your intent to cancel must be received by Foundation Specialist, LLC no later than midnight of the third business day following Your acceptance of the proposal.

Alteration From Specifications: Any alteration or deviation from Your Contract specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the Contract Price.

Responsibility for Damage: Customer assumes all responsibility for damage due to breakage of any hidden fuel/utility service lines AND IRRIGATION SPRINKLERS.

Reliance on Customer Representations: CONTRACT IS BASED ON YOUR DESCRIPTION OF THE PROBLEM. Foundation Specialist has relied on Your representations in drafting the provisions of this contract and in performance of the work specified.

Warranty Limitations: I fully understand and accept any transferable warranty applicable to this contract which covers only the areas of the basement addressed. If a service call is requested by customer NOT related to FS work, You will be charged a service fee determined by Foundations Specialist's sole discretion. Installation and/or service work DOES NOT include painting, finished carpentry, electrical work, condensation, window well flooding, water once pumped from the house, or water coming over top of the wall. EXCEPT AS EXPRESSLY STATED BELOW, THE CONTRACTOR DISCLAIMS ALL WARRANTIES IN CONNECTION WITH THIS PROPOSAL, EXPRESS OR IMPLIED, -- WHETHER ORAL OR WRITTEN -- AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION DESCRIPTION, QUALITY, DESIGN, PERFORMANCE, SPECIFICATIONS, CONDITION, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. THE CONTRACTOR'S LIABILITY FOR ANY CLAIM OF ANY KIND, INCLUDING WITHOUT LIMITATION NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF WARRANTY, SHALL IN NO CASE EXCEED THE SUM OF THIS PROPOSAL AND SHALL NOT INCLUDE ANY LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, OR LOSS OF PRODUCTION OR PROFITS.

Site Preparation: You are responsible for moving objects from the walls which may also include -- but are not limited to -- water heater, well tank, furnace, washer/dryer, well pump, toilet, shower, sink, electrical, etc. the distance(s) specified in this Contract. You are responsible to ensure electrical power and water is turned on and available for FS to use during the installation process. Additional costs will be incurred by You if water and power are not available. THERE WILL ALSO BE ADDITIONAL COSTS CHARGED FOR ITEMS NOT MOVED AS SPECIFIED IN THE CONTRACT.

Expectation of Dust: DUST SHOULD BE EXPECTED FROM WORK PERFORMED UNDER THIS CONTRACT. We recommend that You seal vents as desired to limit dust from traveling throughout Your home. FS recommends having a professional cleaning company ready for final clean-up post performance.

Perimeter Wall Preparation: You are responsible for removal and replacement of any finished perimeter walls in the work area as specified prior to the job start date set by Foundation Specialist. Additional costs will occur if the assigned crew cannot perform the job on the scheduled date because walls were not removed in advance.

Time for Completion: In the event of a delay, suspension, or interference with any part of the contract performance that is not due to the fault of FS including but not limited to delays caused by weather, illness, contaminated or hazardous materials or soils, labor problems, You, or material shortages, there will be an equitable adjustment of the Contract time. You acknowledge that any delay in the contract performance caused by You will cause additional charges to You by FS.

Payment: Any payments 30 days past due shall be assessed a 5% late fee per month. Payments are to be made in full upon job completion. Payment due at completion of job to the job foreman, not after any paperwork such as permit or engineering report. All warranties are void if project is not paid in full. Nothing herein shall be construed to limit any other remedies for breach or nonpayment Contractor may have at law or equity. No warranties are valid until invoice is paid in full.

Your Right To Cancel / Terms & Conditions

Insurance Considerations: If You have a sump pump in Your basement, we recommend that You contact Your insurance company for any applicable insurance coverage modifications. We also strongly recommend a construction insurance policy if available by Your insurance carrier for any work involving the structure of Your property.

Permits: Permits are not included unless otherwise stated. If any permits, engineered drawings, or land surveys are required, You are responsible to cover the additional cost and administrative fees. If electrical outlet and permit are required by the city, Customer is responsible to have that installed with 60 days of FS work being completed or it will void the pump warranties. All other warranties are void until the outlet/permit is completed. In addition customer is subsequently responsible for fines from the city for non-compliance.

Drawings: drawings are an approximant guideline for the foreman, foreman has final overall discretion for final product placement etc., and the foreman's discretion may vary from the drawings as needed.

Performance Liability Disclaimer: FS shall not be liable for any delay or failure to perform all or any part of this Agreement or for any damage, loss, cost, or expense that results from a delay, failure, damage, loss, cost, or expense that is the proximate result of any fire, flood, act of God, revolution, riot, civil disorder, vandalism, act of enemies, terrorism, or labor dispute, including disputes among or between unions or any sovereign nation or political subdivision, including all agencies, bureaus, departments, and representatives; acts or omissions of You; or any other cause not within FS's control, whether or not the cause is enumerated above.

Mold Disclaimer: Whether or not a home experiences mold growth may depend largely on how the Customer manages and maintains the home. Customer understands and agrees that FS does not warrant against the presence of mold in the Property. FS will not be responsible for any damages caused or allegedly caused by mold including -- but not limited to -- property damage, lost value, or any adverse health effects or conditions. All implied warranties, including any implied warranty of workmanlike construction, any implied warranty of habitability, or any implied warranty of fitness for a particular purpose, are waived and disclaimed by Customer to the fullest extent permitted by law, and Customer agrees to indemnify, defend, and hold FS harmless for any mold in the Property. This duty to indemnify, defend, and hold harmless shall survive the completion of the Work and shall not be deemed merged with the tender of final payment for the Work. REGARDLESS OF HOW MOLD MAY GROW IN THE RESIDENCE, YOUR WARRANTIES DO NOT OFFER YOU ANY WARRANTY REGARDING MOLD AND POTENTIAL DAMAGE OR HARM FROM MOLD. IT IS THE SOLE DUTY AND RESPONSIBILITY OF THE CUSTOMER OF THE RESIDENCE TO INSPECT FOR AND PREVENT MOLD IN THE HOME FOR AS LONG AS CUSTOMER OWNS THE HOME

Successors and Assigns: You may not assign Your duties or obligations under this Contract without written consent of FS. The provisions of this Contract are binding on Your successors or assigns.

Foundation Specialist Option to Cancel: Foundation Specialist may cancel this Contract at any time at our sole discretion.

Job Pictures: Unless otherwise expressed, Foundation Specialist can use all job pictures for marketing purposes and promotional purposes.

Costs: Fees. In the event of any legal action by FS to collect any amount due under this Contract, You shall pay FS all reasonable costs and expenses thereof, together with reasonable attorney's fees (including fees incurred in appeals and post judgment proceedings).

No Other Agreement: This Contract and the Contract Documents incorporated in it is the entire agreement between the parties. No oral or written communication or negotiations that occurred before the execution of this Contract will be considered to be part of this agreement. This Contract may be modified only by written document signed by both the parties or by a written change order as provided in this Contract. This Contract will be governed by the laws of the State of Michigan. No additional warranties or guarantees rather express or implied are included in this Contract.

If accepting, please sign below: Date:____/____/2024

Acceptance Of Proposal (Sign In Box Below)

Project Manager: Cody Markward

License: #2102212972

1518 Steele Ave SW Grand Rapids, MI 49507

Cell: 616-813-9761 Office: 616-377-8111

Bill To

Cody@foundationspecialistmi.com

Ebony Crane

(616)930-6944

1192 Pine St.

Muskegon, MI 49442

craneeb@gmail.com

Number

1777

Date

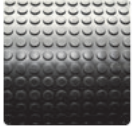
Aug 14, 2024

P.O.

Terms

Ship Via

Tentative Installaton Date

Qty	Description	Unit	Ext	Photo
12	CS/ HD Galvanized Support Post (includes base) Install steel adjustable support post and Install a structural base for support post. The support post will stabilize the structure or FS can attempt to lift the foundation/beam and support the load above. Adjustments of the support posts will have to be done if it appears there is any sagging of the beams. Lift is not guaranteed. This is not included in the price of the job. A service call of minimum of \$199.00 (depending on number of adjustments) will be charged to the homeowner if they want Foundation Specialist LLC, to come out and adjust the posts.	\$1,195.00	\$14,340.00	
70	Steel i Support Beam Install new coated 4in steel support I beam.	\$79.00	\$5,530.00	
450	12 Mil Crawl Space Liner Crawl Space Encapsulation -12 Mil cross woven polyethylene -Sealed seams and penetrations -25 year warranty against rips and tears only.	\$6.25	\$2,812.50	
450	Dimpled Drainage Matting Dimpled membrane used with encapsulation liner to divert water from wall into drainage system below.	\$1.65	\$742.50	
1	Deposit A deposit of 50% is required for scheduling the work to be performed. After 3 business days the deposit will become non-refundable and will be held as a credit towards any Foundation Specialist LLC, services. Final payment is due upon completion of Job.	\$0.00	\$0.00	

Total

Project Manager: Cody Markward

License: #2102212972

1518 Steele Ave SW Grand Rapids, MI 49507

Cell: 616-813-9761 Office: 616-377-8111

Bill To

Cody@foundationspecialistmi.com

Ebony Crane

(616)930-6944

1192 Pine St.

Muskegon, MI 49442

craneeb@gmail.com

Qty	Description	Unit	Ext	Photo
-----	-------------	------	-----	-------

HD Stabilizer Galvanized Support Post Warranty

In areas where relevant work was performed by Foundation Specialist, the Contractor hereby warrants that Galvanized Support Posts will stop further appreciable settlement of the repaired structure for 25 years from the date of installation. Also included is a second 25 year warranty from the manufacturer. In the event of a problem, Foundation Specialist will provide the labor and materials, at no cost to Customer, to correct problem(s) with the Galvanized Support Posts. Areas that are not supported entirely from corner to corner, covering the entire basement, as performed by Contractor are not under warranty. Galvanized Support Posts are under warranty only to stabilize the affected structure from appreciable settlement. If Customer desires further movement of the structure, the project manager will need to be contacted for a new proposal. The cost of adjustments is not included in this proposal or warranty, but adjustments are available from Foundation Specialist at an additional charge. Please consult the project manager for costs of additional adjustments.



Thank You!

Total \$23,425.00

Terms

Terms & Conditions: Bid valid for 30 days.

Your Right to Cancel: If Homeowner ("You") entered into this Contract as a result of, or in connection with, a salesman's direct contact with or call to You at Your residence without You soliciting the contract or call, then You have a legal right to void the Contract or sale by notifying us within (3) business days from accepting the proposal with a full refund of Your deposit. After (3) business days Foundation Specialist ("FS") will charge a minimum fee of 15-25% of the total job cost. **How To Cancel:** If You decide to cancel this transaction, You may do so by notifying us in writing at Foundation Specialist, 1518 Steele Ave SW, Grand Rapids, MI 49507. You may use any written statement that is signed and dated by all contracting parties clearly stating Your intentions to cancel. Written notice of Your intent to cancel must be received by Foundation Specialist, LLC no later than midnight of the third business day following Your acceptance of the proposal.

Alteration From Specifications: Any alteration or deviation from Your Contract specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the Contract Price.

Responsibility for Damage: Customer assumes all responsibility for damage due to breakage of any hidden fuel/utility service lines AND IRRIGATION SPRINKLERS.

Reliance on Customer Representations: CONTRACT IS BASED ON YOUR DESCRIPTION OF THE PROBLEM. Foundation Specialist has relied on Your representations in drafting the provisions of this contract and in performance of the work specified.

Warranty Limitations: I fully understand and accept any transferable warranty applicable to this contract which covers only the areas of the basement addressed. If a service call is requested by customer NOT related to FS work, You will be charged a service fee determined by Foundations Specialist's sole discretion. Installation and/or service work DOES NOT include painting, finished carpentry, electrical work, condensation, window well flooding, water once pumped from the house, or water coming over top of the wall. EXCEPT AS EXPRESSLY STATED BELOW, THE CONTRACTOR DISCLAIMS ALL WARRANTIES IN CONNECTION WITH THIS PROPOSAL, EXPRESS OR IMPLIED, -- WHETHER ORAL OR WRITTEN -- AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION DESCRIPTION, QUALITY, DESIGN, PERFORMANCE, SPECIFICATIONS, CONDITION, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. THE CONTRACTOR'S LIABILITY FOR ANY CLAIM OF ANY KIND, INCLUDING WITHOUT LIMITATION NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF WARRANTY, SHALL IN NO CASE EXCEED THE SUM OF THIS PROPOSAL AND SHALL NOT INCLUDE ANY LIABILITY FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, OR LOSS OF PRODUCTION OR PROFITS.

Site Preparation: You are responsible for moving objects from the walls which may also include -- but are not limited to -- water heater, well tank, furnace, washer/dryer, well pump, toilet, shower, sink, etc. the distance(s) specified in this Contract. You are responsible to ensure electrical power and water is turned on and available for FS to use during the installation process. Additional costs will be incurred by You if water and power are not available. THERE WILL ALSO BE ADDITIONAL COSTS CHARGED FOR ITEMS NOT MOVED AS SPECIFIED IN THE CONTRACT.

Expectation of Dust: DUST SHOULD BE EXPECTED FROM WORK PERFORMED UNDER THIS CONTRACT. We recommend that You seal vents as desired to limit dust from traveling throughout Your home. FS recommends having a professional cleaning company ready for final clean-up post performance.

Perimeter Wall Preparation: You are responsible for removal and replacement of any finished perimeter walls in the work area as specified prior to the job start date set by Foundation Specialist. Additional costs will occur if the assigned crew cannot perform the job on the scheduled date because walls were not removed in advance.

Time for Completion: In the event of a delay, suspension, or interference with any part of the contract performance that is not due to the fault of FS including but not limited to delays caused by weather, illness, contaminated or hazardous materials or soils, labor problems, You, or material shortages, there will be an equitable adjustment of the Contract time. You acknowledge that any delay in the contract performance caused by You will cause additional charges to You by FS.

Payment: Any payments 30 days past due shall be accessed a 5% late fee per month. Payments are to be made in full upon job completion. Payment due at completion of job to the job foreman, not after any paperwork such as permit or engineering report. All warranties are void if project is not paid in full. Nothing herein shall be construed to limit any other remedies for breach or nonpayment Contractor may have at law or equity. No warranties are valid until invoice is paid in full.

Terms

Insurance Considerations: If You have a sump pump in Your basement, we recommend that You contact Your insurance company for any applicable insurance coverage modifications. We also strongly recommend a construction insurance policy if available by Your insurance carrier for any work involving the structure of Your property.

Permits: Permits are not included unless otherwise stated. If any permits, engineered drawings, or land surveys are required, You are responsible to cover the additional cost and administrative fees.

Drawings: drawings are an approximant guideline for the foreman, foreman has final overall discretion for final product placement etc., and the foreman's discretion may vary from the drawings as needed.

Performance Liability Disclaimer: FS shall not be liable for any delay or failure to perform all or any part of this Agreement or for any damage, loss, cost, or expense that results from a delay, failure, damage, loss, cost, or expense that is the proximate result of any fire, flood, act of God, revolution, riot, civil disorder, vandalism, act of enemies, terrorism, or labor dispute, including disputes among or between unions or any sovereign nation or political subdivision, including all agencies, bureaus, departments, and representatives; acts or omissions of You; or any other cause not within FS's control, whether or not the cause is enumerated above.

Mold Disclaimer: Whether or not a home experiences mold growth may depend largely on how the Customer manages and maintains the home. Customer understands and agrees that FS does not warrant against the presence of mold in the Property. FS will not be responsible for any damages caused or allegedly caused by mold including -- but not limited to -- property damage, lost value, or any adverse health effects or conditions. All implied warranties, including any implied warranty of workmanlike construction, any implied warranty of habitability, or any implied warranty of fitness for a particular purpose, are waived and disclaimed by Customer to the fullest extent permitted by law, and Customer agrees to indemnify, defend, and hold FS harmless for any mold in the Property. This duty to indemnify, defend, and hold harmless shall survive the completion of the Work and shall not be deemed merged with the tender of final payment for the Work. **REGARDLESS OF HOW MOLD MAY GROW IN THE RESIDENCE, YOUR WARRANTIES DO NOT OFFER YOU ANY WARRANTY REGARDING MOLD AND POTENTIAL DAMAGE OR HARM FROM MOLD. IT IS THE SOLE DUTY AND RESPONSIBILITY OF THE CUSTOMER OF THE RESIDENCE TO INSPECT FOR AND PREVENT MOLD IN THE HOME FOR AS LONG AS CUSTOMER OWNS THE HOME**

Successors and Assigns: You may not assign Your duties or obligations under this Contract without written consent of FS. The provisions of this Contract are binding on Your successors or assigns.

Foundation Specialist Option to Cancel: Foundation Specialist may cancel this Contract at any time at our sole discretion.

Job Pictures: Unless otherwise expressed, Foundation Specialist can use all job pictures for marketing purposes and promotional purposes.

Costs: Fees. In the event of any legal action by FS to collect any amount due under this Contract, You shall pay FS all reasonable costs and expenses thereof, together with reasonable attorney's fees (including fees incurred in appeals and post judgment proceedings).

No Other Agreement: This Contract and the Contract Documents incorporated in it is the entire agreement between the parties. No oral or written communication or negotiations that occurred before the execution of this Contract will be considered to be part of this agreement. This Contract may be modified only by written document signed by both the parties or by a written change order as provided in this Contract. This Contract will be governed by the laws of the State of Michigan. No additional warranties or guarantees rather express or implied are included in this Contract.

If accepting, please sign below: Date: ____/____/2024

Signature

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Equipment Replacement – Front-end Loader							
Submitted by: Joe Buthker, DPW Superintendent	Department: Public Works							
Brief Summary: Staff is requesting authorization to purchase a Caterpillar front-end loader from Michigan CAT for \$230,706.76.								
Detailed Summary & Background: DPW staff use front-end loaders daily to complete a variety of important tasks throughout the City. These tasks include loading trucks with road salt and road repair materials, assisting construction projects and cleanups throughout the City, removing sand from the streets at the beach, managing the sludge at the Water Filtration Plant, and much more. With approval from the City Commission, a new Caterpillar 938M front-end loader will be purchased to replace a heavily-used front-end loader that was acquired in 2012. This purchase from Michigan CAT is under the Sourcewell contract at a cost of \$277,706.76. Sourcewell is a nationwide purchasing collective that publicly bids items and offers the lowest bid price to member organizations. The Caterpillar front-end loader being replaced will be traded-in for a credit of \$47,000, resulting in a net cost of \$230,706.76. This purchase is part of the Equipment Fund capital purchase plan and is a budgeted expenditure for FY 2024-25.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Sustainability in financial practices and infrastructure Goal/Action Item: 2027 Goal 4: Financial Infrastructure								
Amount Requested: \$230,706.76	Budgeted Item: <table border="1"><tr><td>Yes</td><td>X</td><td>No</td><td></td><td>N/A</td><td></td><td></td></tr></table>	Yes	X	No		N/A		
Yes	X	No		N/A				
Fund(s) or Account(s): Equipment Fund (661-563-977)	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td>X</td><td>N/A</td><td></td><td></td></tr></table>	Yes		No	X	N/A		
Yes		No	X	N/A				
Recommended Motion: I move to authorize staff to purchase a new front-end loader from Michigan CAT for \$230,706.76.								
Approvals: <table border="1"><tr><td>Immediate Division</td><td>X</td><td></td></tr></table>	Immediate Division	X		Guest(s) Invited / Presenting:				
Immediate Division	X							

Head			No
Information Technology			
Other Division Heads			
Communication			
Legal Review			



August 27, 2024

CITY OF MUSKEGON PURCHASING DEPT
1350 E KEATING AVE
Muskegon, Michigan 49442

Thank you for this opportunity to quote Caterpillar products for your business needs. We are pleased to quote the following for your purchase consideration.

One (1) New Caterpillar Model: 938M Wheel Loader with all standard equipment in addition to the additional specifications listed below:

STOCK NUMBER: 86983

SERIAL NUMBER: P5K04585

YEAR: 2024

SMU: 3

MACHINE SPECIFICATIONS

938M WHEEL LOADER
ELECTRONICS AR
HYDRAULIC AR
INSTALLATION AR
POWER TRAIN AR
CHASSIS AR
ANTIFREEZE, -50C (-58F)
AUTOLUBE
CAB, DELUXE
COUNTERWEIGHT, 4431LBS, AGG, 8PCS
DIFFERENTIAL, OPEN REAR
ENGINE
ENVIRONMENT, MEDIUM DEBRIS
FENDERS, FULL COVER
HYDRAULIC OIL, STANDARD
HYDRAULICS, 3V, CPLR READY, HL
HYDRAULICS, STANDARD
JUMPER LINES, AUX 3RD, FUSION
LIGHTS, ROADING, HALOGEN, RH
LINES, AUX 3RD, HIGH LIFT
PREP PACK, UNITED STATES
PRODUCT LINK, CELLULAR PL641
QUICK COUPLER, FUSION
RIDE CONTROL
SEAT, DELUXE
STANDARD RADIO (12V)
STEERING, STANDARD
TIRES, 20.5R25 MX XTLA * L2
TOOLBOX AUX, NONE
WEATHER, COLD START 120V
LIGHTS, AUX, HALOGEN
BUCKET-GP, 3.8 YD3, FUS, BOCE

WARRANTY & COVERAGE

Standard Warranty: Standard Warranty New CAT Machines - 12 Months Unlimited Hours Full Machine.

Sell Price	\$277,706.76
------------	--------------

Sourcewell Contract 011723-CAT

TRADE-INS

Model	Make	Serial Number	Year	Trade Allowance
930K	CATERPILLAR (CATERPILLAR)	RHN01729	2013	\$47,000.00

Thank you for your interest in Michigan CAT and Caterpillar products for your business needs. This quotation is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

Jim Langbeen
Machine Sales Representative
Michigan CAT
Jim.Langbeen@MICHIGANCAT.com
616-292-3610

Caterpillar 938M

Front-end Loader



WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: MDOT Trunkline Maintenance Contract Renewal							
Submitted by: Dan VanderHeide, Public Works Director	Department: Public Works							
Brief Summary: Staff requests approval to enter into a five-year contract with the Michigan Department of Transportation (MDOT) to authorize the City to maintain and to receive reimbursement for maintaining, state trunklines such as M-46 (Apple Avenue) and US-31BR (Shoreline Drive) within the City limits.								
Detailed Summary & Background: The City DPW has long maintained the state trunklines within our City limits. This helps the City have more control over the level of maintenance provided on those trunklines while allowing the City to be reimbursed for the costs by the state. The arrangement is covered by a contract with the state which is included herein and is recommended for approval. This extension will cover the arrangement through the state's fiscal year ending September 30, 2029. The format is of the standard form that has been used for this contract in the past.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Foster strong ties among government and community agencies Goal/Action Item: 2027 Goal 1: Destination Community & Quality of Life - Improved transportation connections throughout the community								
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Fund(s) or Account(s): 204 (State Trunklines)	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Recommended Motion: Approve staff to enter into a five-year contract with the Michigan Department of Transportation (MDOT) to authorize the City to maintain and to receive reimbursement for maintaining, state trunklines such as M-46 (Apple Avenue) and US-31BR (Shoreline Drive) within the City limits.								
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>X</td><td></td></tr></table>	Immediate Division Head	X		Guest(s) Invited / Presenting: No				
Immediate Division Head	X							

Information Technology			
Other Division Heads			
Communication			
Legal Review			

MICHIGAN DEPARTMENT OF TRANSPORTATION
STATE TRUNKLINE MAINTENANCE CONTRACT
CITY OF MUSKEGON

This Contract made and entered into by and between the Michigan Department of Transportation (MDOT), and the City of Muskegon, a Michigan municipal corporation (Municipality).

RECITALS:

MDOT is authorized by 1925 PA 17 Section 2, MCL 250.62 to contract with the Municipality for the construction, improvement, or maintenance of state trunkline highways and appurtenant facilities. MDOT, subject to the approval of the State Administrative Board; and

MDOT has affirmatively found that contracting with this Municipality for the maintenance of state trunkline highways and bridges within its contract area, is in the best public interest; and

MDOT has so advised the State Transportation Commission and the Appropriations Committees of the Senate and House of Representatives in accordance with 1951 PA 51 Section 11c, MCL 247.661c; and

The parties agree as follows:

SECTION 1. SCOPE OF WORK

- A. Services Provided: For the term of this Contract, the Municipality agrees to maintain the state trunk line highways and, if applicable, appurtenant facilities within the Contract Area by performing maintenance work. Maintenance work will be performed under the direction of the Region Engineer of MDOT or a designee of the Region Engineer, acting under the general direction of the Engineer of Transportation Systems Management and Operations (TSMO) of MDOT. Work performed under this Contract will be performed in accordance with accepted maintenance practices and/or specifications provided by MDOT as identified in a written Letter of Understanding. For maintenance work not covered by the Field Activity Budget, a Transportation Work Authorization (TWA) will be issued by the Region Engineer.
1. A written Letter of Understanding shall be drafted by MDOT and signed by both MDOT and the designated representative of the Municipality. The letter shall remain in effect until either replaced or modified by the Region Engineer and

approved by the Municipality. The letter will outline the number and type of maintenance activities to be performed under this Contract (A sample Letter of Understanding is attached as Appendix F). The Letter of Understanding shall provide sufficient detail of the work activities to be performed, expectations or outcomes from the performance of this work, and identification of budget line items for budgeting and billing purposes. Attachment G (Municipality Firm Unit Prices) and H (Municipality Snow Hauling Calculation Form) will be attached to the Letter of Understanding.

2. The executed Letter of Understanding and all subsequent approved revisions thereto, are incorporated herein by reference as if the same were repeated in full herein.
 3. If the Municipality is unable to perform any of the services outlined in the Letter of Understanding on a twenty-four (24) hour, seven (7) day-a-week basis, the Municipality will immediately notify MDOT. MDOT will work with the Municipality to ensure that the services defined in the Letter of Understanding are performed.
 4. The Municipality and MDOT may agree to include additional maintenance items to be covered under this Contract. Such items may include, but are not limited to, maintenance of traffic control devices (signals), freeway lighting and intelligent traffic systems (ITS). All such work will be listed in the Letter of Understanding, as set forth in Appendix F, included in the line item budget and defined in a supplemental scope.
 5. The Municipality shall be responsible for providing all traffic control necessary to complete the work as outlined in this Contract unless otherwise agreed to by MDOT.
 6. The Municipality and MDOT may enter into separate agreements for the shared payment of installation, maintenance, and energy costs for traffic control devices.
- B. Specifications and Performance: The Municipality will provide personnel, equipment, materials, and facilities to perform the maintenance work under the terms of this Contract in a manner consistent with MDOT's established guidelines for winter and non-winter maintenance activities.

The Municipality shall perform all maintenance work under this Contract in accordance with accepted maintenance practices and/or specifications provided by MDOT and in accordance with the approved Budget and annual Work Plan.

When MDOT recognizes that a certain maintenance activity, is not in compliance with accepted maintenance practices and/or specifications, it will, within sixty (60) days of the billing of work, issue a written notice to the Municipality. Upon issuance of the first written notice, MDOT will work with the Municipality to develop a corrective action plan. Once

both MDOT and the Municipality are satisfied with the corrective action plan, MDOT and the Municipality will approve the plan for implementation. MDOT will reimburse the Municipality for the cost of the non-compliant work. Once the corrective work is completed in accordance with the corrective action plan, the Municipality will submit the cost for the corrective work for full reimbursement by MDOT. The Municipality agrees that if corrective work is not in accordance with the corrective action plan, the Municipality will not invoice MDOT for the non-compliant corrective work.

If MDOT determines that the corrective work is not in compliance with the corrective action plan, within thirty (30) days it will issue a second written notice to the Municipality describing the unacceptable corrective work, the reason for rejection, and include a written copy of MDOT's maintenance practices and/or specifications, if applicable. Work not meeting the corrective action plan will be corrected by the Municipality in accordance with the second written notice and the previously approved corrective action plan, without additional charge to MDOT. If MDOT, upon completion of the Municipality's second attempt to correct the non-compliant work, determines that the work is still not in compliance, MDOT will have the non-compliant work corrected by other means at MDOT's expense and the Municipality will reimburse MDOT for such expense through Maintenance Local Agency Payment System (MLAP). If there is a disagreement between MDOT and the Municipality regarding whether or not the corrective work meets MDOT's maintenance practices and/or specifications, the Municipality may request the Dispute Resolution Process as outlined in Section 26.

- C. Permits: At the request of the Region Engineer, the Municipality may agree to inspect work performed by permit or otherwise assist MDOT with permits. In such event:
1. MDOT will require all Permit Applicants to "save harmless" the State of Michigan, Transportation Commission, MDOT, and all officers, agents, and employees thereof, and the Municipality, their officials, agents, and employees, against any and all claims for damages arising from operations covered by the permit as a condition of all permits issued by MDOT.
 2. MDOT will further require Permit Applicants to provide Commercial general liability insurance, including coverage for contractual liability, completed operations, and/or product liability, X (Explosion), C (Collapse), & U (Underground), and a contractor's protective liability policy with a blasting endorsement when blasting is involved, or Commercial general liability insurance which includes all the above, naming as additional parties insured on all such policies, the State of Michigan, Transportation Commission, MDOT, and all officers, agents, and employees thereof, the Municipality their officials, agents, and employees. The Permit Applicant will provide written proof of the insurance to MDOT. MDOT may waive this requirement for permits issued to governmental entities or public utilities.

3. The amounts of such insurance will be no less than:

Commercial General Liability Insurance:

The minimum limits shall be \$1,000,000 each occurrence and \$2,000,000 aggregate.

Combined single limit for bodily injury and property damage liability shall be \$1,000,000 each occurrence.

The insurance limits above may be attained through an umbrella policy.

- D. Transportation Work Authorizations: TWA's may be issued by the Region Engineer for both Maintenance work and non-maintenance work. This work may be performed by the Municipality, or a subcontractor as set forth in Section 9 of this Contract. TWA's will be performed in accordance with MDOT's accepted maintenance practices and specifications and as required in the TWA. The Municipality will provide the necessary supervision or inspection to ensure that the work is performed in accordance with the TWA. In the event the Region Engineer finds the work performed not in compliance with MDOT's accepted maintenance practices or the specifications on the TWA, then the corrective action specified in Subsection 1 (B) will be followed.
- E. The Region Engineer is authorized to issue written orders, as necessary, for the performance of maintenance work under the provisions of this Contract.

SECTION 2. RESERVED FOR FUTURE USE

SECTION 3. INTEGRATION OF STATE AND MUNICIPAL WORK

The Municipality will furnish qualified personnel and adequate equipment and may furnish materials, as set forth in this Contract, as needed to perform maintenance on state trunkline highways, consistent with MDOT's established core level of service for winter and non-winter maintenance activities, an approved annual budget, work plan, and work schedule. Personnel and equipment may be used on the local road system and state trunkline highways as conditions warrant.

SECTION 4. HIGHWAY MAINTENANCE CONTRACT ADMINISTRATOR

The Municipality hereby designates Dan VanderHeide. as Contract Administrator on state trunkline highways, who will be responsible for budget and the administration of the Contract. The Municipalities' title for this position is Director of Public Works. In the

event the Municipality desires to replace the Contract Administrator, the Municipality will notify MDOT within (30) days of the change in writing.

SECTION 5. SUPERVISION

The Municipality hereby designates Vern Berndt or others functioning in the same capacity as Highway Maintenance Foremen, hereinafter referred to as the “Foremen”, who will oversee all work covered by this Contract and be responsible to the Contract Administrator. The Municipality will notify MDOT in writing within (30) days of any change in the above personnel. The Municipality will be reimbursed for actual time worked by the Foremen on state trunkline Highway maintenance when supported by daily timecards signed by their immediate supervisor or electronic timekeeping approved by their assigned supervisor subject to the provisions of Subsection 16(B).

SECTION 6. WAGE SCHEDULE

Wages paid by the Municipality for work on state trunkline highways will be the same as on street work for the Municipality. A copy of the union agreement or HR Wage Schedule will be provided to MDOT upon request.

No “stand by at home” pay will be included in charges for work on state trunkline highways.

MDOT will reimburse the Municipality for Direct Labor Overhead costs on all labor costs properly chargeable to MDOT, including but not limited to, vacation, sick leave, holiday pay, workers’ compensation, retirement, social security, group life insurance, hospitalization, longevity, unemployment insurance, and military leave, hereinafter referred to as “EMPLOYEE BENEFITS,” in accordance with Section 16.

SECTION 7. MATERIALS TO BE ACQUIRED AND SPECIFICATIONS

Material necessary for the performance of this Contract, may be purchased by the Municipality unless otherwise directed by the Region Engineer. The Municipality will advertise and receive competitive bids when such purchases exceed Ten Thousand Dollars (\$10,000.00), or if required by federal or state law. The Municipality shall select the lowest qualified bid.

The Municipality will retain documentation that such bids were taken. Failure to retain documentation that such bids were taken may result in denial of reimbursement of the costs of such materials.

The following materials: bituminous pre-mixed materials, bituminous materials, aggregates (except ice control sand), bulk salt and traffic control devices used on state trunkline highways by the Municipality, will conform to current or supplemental specifications of MDOT, unless otherwise approved in advance by the Region Engineer. The Region Engineer may require approval by MDOT's Construction Field Services Division, or by a laboratory approved by the Construction Field Services Division. Copies of approvals will be placed on file in the offices of the Municipality and the Region Engineer. If MDOT-owned materials are stored jointly with Municipality-owned materials, proper and adequate inventory records must be maintained by the Municipality clearly indicating the portion that is MDOT-owned.

SECTION 8. PRICE SCHEDULE OF MATERIALS AND SERVICES

Materials produced and/or supplied by the Municipality may be furnished at a firm unit price subject to approval of source and price by the Region Engineer. Firm unit prices are not subject to unit price adjustment by review/audit. The term "review/audit" hereafter will be referred to as "review".

The Municipality may change, add, or delete firm unit prices when requested in writing and approved by the Region Engineer at least sixty (60) days prior to the effective date of the change, addition, or deletion. All changes will be submitted with the Firm Unit Prices form, Appendix G.

☒ No, Firm Unit Price items will not be used.

☐ Yes, Firm Unit Price items will be used.

MDOT may review all records necessary to assess the accuracy of the material quantities for all materials on the Firm Unit Price List for which the Municipality requests reimbursement.

Items purchased from a vendor source or vendor stockpile for direct use on the state trunkline highways are not eligible for firm unit price consideration and should be billed at vendor pricing.

Reimbursement for all materials supplied by the Municipality which are not included in the firm unit price schedule will be reimbursed in accordance with Section 16(E). MDOT may review all records for materials purchased from a vendor source or vendor stockpile for direct use on state trunkline highways.

SECTION 9. SUBCONTRACTS

The Municipality may subcontract any portion of the work to be performed under this Contract. Bidding/price solicitation and subcontracts will comply with applicable law and conform to the Municipality's contracting process except as modified herein. All subcontracted work will require the Municipality to submit a Quotation Request for Services or Equipment (Form 426) along with relevant bid and contract documents and bid or quote tabulation.

All subcontracted work will be performed in accordance with the established Scope of Work outlined on Form 426 and any specifications developed by the Municipality and/or MDOT for the subcontracted work. The scope of work and any specifications must be approved by the Region Engineer. The Municipality will provide the necessary supervision or inspection to assure the subcontracted work is performed in accordance with the scope of work and specifications. At no time will the Municipality pay for subcontracted work until the work has been inspected and approved by the Municipality for compliance with the scope of work and specifications.

Emergency work will be subcontracted based on a verbal approval given by the Region Engineer. The work must be supported by the submission of a Form 426 and summary of emergency work within 15 days of completion.

The parties agree to extend the terms of the Contract if subcontracted work is incomplete at the conclusion of the Contract term. This provision shall not apply if this Contract is terminated by the Municipality or MDOT. In situations where this Contract is terminated by the Municipality or MDOT, all subcontracts shall be deemed terminated as of the date the Contract is terminated. The Municipality must incorporate this provision into all subcontracts.

County and/or Municipality-based advantage programs, hereinafter the "CBA Process", or any type of preference program which awards contracts based on criteria other than low bid through the competitive bidding process, may not be used for any work under this Contract.

Failure to obtain the necessary approvals or to retain the documentation that the bids, prices, or rate quotations were solicited as required in this section may result in a denial of the reimbursement of the costs.

The term of any subcontract will not exceed five (5) years including any extensions.

For subcontracts involving the items of Drainage Structure Cleanout, Curb Sweeping, and Area Mowing, the Municipality will include a cancellation clause that will allow the Municipality to cancel the subcontract if funds are not made available by MDOT.

All Subcontracts shall be awarded to the lowest qualified bid. Subcontract solicitation and approval process will be as follows:

- A. **Subcontracts less than \$25,000:** The Municipality will solicit either a bid price, or rate quotation from three or more qualified sources. Documentation of solicitation from all qualified sources must be retained. Region Engineer approval of Form 426 is required.
- B. **Subcontracts \$25,000 or greater:** The Municipality will advertise and award by competitive bid. Advertisements must clearly define the scope of work, performance specifications, MDOT contract terms, and the location of work to be performed. Documentation of the solicitation from all qualified sources must be retained. Region Engineer approval of Form 426 is required.

State Administrative Board requirements for Contracts and Amendments (previously referred to as overruns, extra work and adjustments), are outlined and set forth in Appendix E, attached hereto and made a part hereof.

SECTION 10. NON-DISCRIMINATION

In connection with the performance of maintenance work under this Contract, the Municipality (hereinafter in Appendix C referred to as the “Contractor”) agrees to comply with the State of Michigan provisions for “Prohibition of Discrimination in State Contracts,” as set forth in Appendix C, attached hereto and made a part hereof. The Municipality further covenants that it will comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this Contract.

SECTION 11. ANTI-KICKBACK

No official or employee of the Municipality or of the State of Michigan will receive remuneration (directly or indirectly) for the purchase of materials, supplies, equipment, or subcontracts in connection with the performance of this Contract.

SECTION 12. SCOPE OF CONTRACT

It is declared that the work performed under this Contract is a governmental function which the Municipality performs for MDOT. This Contract does not confer jurisdiction upon the Municipality over the state trunkline highways encompassed by this Contract or over any other state trunkline highways. This Contract may not be construed to confer temporary or concurrent jurisdiction upon the Municipality over a state trunkline highway. Nothing inconsistent with the underlying statutory jurisdiction, duties, prerogatives, and obligations of MDOT is herein intended. The parties hereto further declare that this Contract is not made for the benefit of any third party.

SECTION 13. INSURANCE

- A. The Municipality will furnish MDOT with a certificate of automobile liability insurance, which complies with the No-Fault Automobile Insurance laws of the State of Michigan, MCL 500.3101, *et seq.* The Insurance coverage will include vehicles owned, leased or rented by the Municipality. Such insurance will not be less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) for bodily injury or death of any one person. Coverage for public liability, property damage, and combined single limit will also comply with the No-Fault Automobile Insurance laws of the State of Michigan. The Municipality will provide thirty (30) days' notice to MDOT prior to cancellation, termination, or material change of the policy. The certificate of said insurance, on MDOT Form 428 (Certificate of Insurance for State Highway Maintenance Contract) covering public liability and property damage, indicating thereon the policy number, and the aforesaid thirty (30) days' notice provisions and the limits of liability, will be submitted to MDOT. The Municipality agrees to review its insurance programs with its statewide association in an effort to obtain cost savings and efficiency for MDOT.

If the Municipality is self-insured, a copy of the Secretary of State's Certificate of Self-insurance will be submitted.

- B. In the event the Municipality receives a Notice of Intent to File Claim and/or any complaint filed by a person seeking to recover damages from the Municipality for its alleged acts or omissions on a state trunkline highway, the Municipality will provide a copy of such notice to the Assistant Attorney General, within fifteen (15) days of receipt of said notice or complaint. The Notice of Intent to File Claim and/or any complaint filed by a person seeking to recover damages from the Municipality will be sent to:

Assistant Attorney General
Division Chief
Transportation Division
Van Wagoner Building - 4th Floor
425 West Ottawa Street
P.O. BOX 30050
Lansing, Michigan 48909

Thereafter, the Municipality will provide copies of pleadings and other information regarding the claim or lawsuit when requested by an Assistant Attorney General

SECTION 14. WORKERS' DISABILITY COMPENSATION

The Municipality will comply with the Michigan Workers' Disability Compensation Act, MCL 500.3400, *et seq.* for all employees performing work under this Contract.

SECTION 15. BUDGET

Each MDOT fiscal year, the Region Engineer will prepare separate budgets for winter and non-winter maintenance in accordance with MDOT guidelines. The Region Engineer, in consultation with the Municipality, shall develop an annual Work Plan which shall include non-winter maintenance activities, a proposed schedule, and the estimated cost for such activities. The sum of those estimated costs will constitute the non-winter Budget and will be distributed monthly in accordance with the proposed schedule.

MDOT agrees that, once established, the fiscal year non-winter maintenance will not be reduced, except as otherwise provided in this Contract. The Budget for winter maintenance activities will be based on a five-year (5) average of winter expenditures which includes the costs for labor, fringe benefits, equipment, MDOT Salt Stores, Municipality-supplied road salt, winter sand, other de-icing chemicals and overhead. Notwithstanding the foregoing, MDOT will establish a statewide holdback fund amount not to exceed thirty percent (30%) of the five (5) year winter average. The statewide holdback funds will be used to cover Winter Overruns of the Municipality, other contract road agencies, and MDOT direct forces. The statewide holdback funds will also be used to pay any budget review adjustments owed to contract agencies. MDOT will distribute any remaining funds in the statewide holdback to contract agencies and MDOT direct forces based on a prioritization of statewide non-winter maintenance needs.

The Region Engineer and the Municipality will review the non-winter maintenance Budget together at least every other month. Any adjustments to the proposed work plan to curtail or expand operations will be addressed in this Budget review. During winter operations, the winter Budget will be reviewed by the Region Engineer and the Municipality every month to conduct the same review.

MDOT and Municipality will meet between March 1 and May 15 of each fiscal year to develop a supplemental summer program. The supplemental summer program will be funded by the remainder of the winter Budget, if any. The work activities proposed in the supplemental summer program will be prioritized to support MDOT's preservation strategy. The remainder of the winter Budget will be released to the Municipality two weeks after the final bill is received by MDOT covering the winter season as defined in the Winter Letter of Understanding.

If the Municipality's winter overruns (including benefits and overhead) exceed MDOT's winter budget and holdback funds statewide, MDOT will seek additional funding to address the overruns including a supplemental appropriation from the State Budget Office. MDOT reserves the right to reduce the non-winter maintenance Budget if efforts to secure additional funding are unsuccessful.

SECTION 16: REIMBURSEMENT SCHEDULE

MDOT will reimburse the Municipality for costs incurred in the performance of the work covered by this Contract, except as set forth in Sections 18, 19, 20, and 21. To be eligible for reimbursement under this Section, costs must be submitted to MDOT's Maintenance Local Agency Payment (MLAP) system prior to the start of the review for each respective year of the Contract period.

- A. Requests for reimbursement shall be made through MLAP at least bi-monthly (every other month) on the basis of certified statement of charges prepared and submitted by the Municipality within fifteen (15) days from the end of each bi-monthly period. Costs submitted beyond sixty (60) days from the end of each bi-monthly period will include written justification for the delay and will be paid only upon approval of the Region Engineer. Municipalities with a line-item budget contract of \$100,000 or greater **shall** submit request for reimbursement on a **monthly** basis.
- B. MDOT will reimburse the Municipality for the cost of all labor employed in the performance of this Contract. The reimbursement will include the expense of permit inspections, field and office engineering, and reviewing expenses in connection with force account work by subcontractors.
- C. MDOT will reimburse the Municipality for the cost of MDOT's share of the cost of EMPLOYEE BENEFITS as referred to in Section 6 as a percentage of payroll. The percentage shall be developed using MDOT Form 455M (Report of Employee Benefit Costs for the Municipality) and shall conform with the general accounts of the Municipality on the Municipality's previous fiscal years' experience. These charges are subject to review in accordance with Section 25.
- D. MDOT will reimburse the Municipality for the cost of MDOT's share of the actual cost of Municipality owned or purchased energy.
- E. MDOT will reimburse the Municipality for the cost of purchased bulk (measured by volume or weight) materials and Non-Bulk (measured by area or count) material used in the performance of this Contract. The Municipality shall deduct all discounts or rebates in excess of two percent (2%), to establish the reimbursed cost.
- F. MDOT will reimburse the Municipality for the cost of handling materials furnished by the Municipality and materials furnished by MDOT as follows:
 - 1. **Bulk Items (measured by volume or weight):**
The direct expenses of handling, such as unloading, processing, stockpiling, heating, or loading for materials in bulk, bags or drums such as aggregates, bituminous materials and chemicals, on condition that reimbursement of such expenses is not provided elsewhere herein, and these costs can be identified within the records of the Municipality. When bulk items intended for use on the state

trunkline are co-mingled with the Municipality's materials for their local roads, MDOT will only reimburse the Municipality for the cost of handling the portion expected to be used on the state trunkline highways. The Municipality will establish a rate of use annually, based on the previous year's use to identify MDOT's share of handling cost. The Municipality's established rate is subject to adjustment by review.

2. **Non-Bulk Items (measured by area or count):**

A five percent (5%) handling and storage charge may be added to the purchase price of all materials measured by area or count provided such materials are stocked in and distributed from approved storage facilities. When reported by the Municipality, charges for handling and storage in excess of five percent (5%) will be reimbursed to the Municipality upon review, provided that these charges can be identified and supported within the records of the Municipality.

- G. Equipment owned by the Municipality will be reimbursed at the established rental rates found in Schedule C, Report 375 Equipment Rental Rates, issued annually by MDOT. Rented equipment will be reimbursed at actual cost for the equipment rental.
- H. MDOT will reimburse the Municipality for the amounts paid by the Municipality to a subcontractor as set forth in Section 9.
- I. MDOT will reimburse the Municipality for the cost of labor, materials, and equipment rental incurred in connection with engineering, supervision, and inspection of subcontract work.
- J. Overhead in Accordance with Attached Overhead Schedule.

MDOT will reimburse the Municipality for overhead costs at the appropriate percentage rate as indicated in Appendix B. The overhead rate shall be based upon the original annual budget established for the Municipality and shall not change.

The overhead amount payable under Section 16(I) is reimbursement to the Municipality for all costs and expenses arising out of the performance of this Contract not specifically described in other sections of this Contract. This reimbursement includes salary and expenses (including transportation) of the Foreman (except as noted in Section 16(K)), salaries of clerical assistants, including radio communication staff, office expense, storage rentals on Municipality owned property, and the cost of small road tools. Work tools without a power assist and used in a road or a bridge maintenance activity, are considered small road tools. Small road tools do not have an equipment rental rate listed in Schedule C, Report 375, Equipment Rental Rates. Small road tools are reimbursed as an overhead cost.

- K. MDOT will reimburse the Municipality for MDOT'S pro-rata share of the cost to maintain chemical storage facilities as provided for in the chemical storage facility contracts between the Municipality and MDOT.

- L. The Municipality will be reimbursed as a direct cost for work performed by the Foreman making regular inspections of state trunkline highways in accordance with written instructions from the Region Engineer. This time shall be specifically recorded on daily time sheets and reported as a direct labor charge.

It is further agreed that in smaller municipalities, the Foreman designated above may at times be engaged in tasks other than those of a strictly supervisory nature, such as operator of a truck or other highway equipment. The Municipality may be reimbursed for this time worked on state trunklines, provided that all such time for non-supervisory work is specifically recorded on the daily time sheet and reported on the Maintenance Payroll Report Form 410A. The exact dates on which the Maintenance Superintendent so worked, the number of hours worked, and the number of hours worked under each classification shall be indicated on the Maintenance Payroll Report Form 410A. **The completed Form 410A shall be uploaded to MDOT's MLAP system.**

SECTION 17: ELECTRONIC FUNDS TRANSFER

Public Act 533 of 2004 requires that payments under this Contract be processed by electronic funds transfer (EFT). The Municipality is required to register to receive payments by EFT at the SIGMA Vendor Self Service (VSS) website (www.michigan.gov/SIGMAVSS).

SECTION 18: SNOW HAULING

MDOT will share in the cost of snow hauling if each snow hauling effort is approved by the Region Engineer. The frequency (annually, each storm, etc.) will be at the discretion of the Region Engineer and will be detailed in the Letter of Understanding. The Municipality should denote snow hauling charges as Activity 149, Other Winter Maintenance, on Trunk Line Maintenance Reports. Prior written authorization from the Region Engineer shall be required for each snow haul event outside the parameters in the Letter of Understanding and shall be kept on file for review purposes.

MDOT'S share of snow hauling will be calculated on the Municipality Snow Hauling Calculation Form, Appendix H. The completed form will be submitted to the Region Engineer. The snow hauling percentage will be based on the ratio of the width of area designated for traffic movement to the width of the total area agreed upon for snow hauling. MDOT is not responsible for snow removal in parking lanes or sidewalks and will subtract the area of parking lanes and sidewalks from the total area of the state trunkline highway right-of-way to determine the area designated for traffic movement.

MDOT'S reimbursement for snow hauling from state trunkline highways will be paid at the below percent of actual charges supported by proper documentation.

67 percent (%)

The Municipality agrees that it will prohibit additional snow from being deposited on the highway right-of-way from side streets.

SECTION 19: PAVEMENT MARKING

Compensation for the item of Special Markings Paint & Tape will be made on the basis of actual expenditure only, except in no case will the Municipality be compensated for a total expenditure in excess of the amount designated for Special Markings Paint & Tape in the Line Item Budget for the appropriate MDOT fiscal year. Compensation for Special Markings Paint & Tape is limited to only painting authorized by the Region Engineer. The Municipality shall not include charges for curb painting in the routine maintenance cost for state trunkline maintenance.

SECTION 20: COMPENSATION FOR AESTHETIC WORK ITEMS

Compensation for the items of Curb Sweeping, Area Mowing and Litter Pickup will be made on the basis of actual expenditures only, except that in no case will the Municipality be compensated for a total expenditure in excess of the budget amount designated each of these three work activities on the Summary of the Field Activity Budget for the appropriate MDOT fiscal year.

The number of work operations for each of these three activities will be agreed upon between the Municipality and Region Engineer; and reflected in each line activity budget amount.

SECTION 21: TREES AND SHRUBS

Except for emergency work, the Municipality must request MDOT'S written approval to remove dead trees and/or trim trees prior to the start of work. MDOT will pay all costs to remove dead trees. MDOT and Municipality shall equally share costs when state and local forces combine efforts to trim trees within the trunkline right-of-way as approved by the Region Engineer.

SECTION 22: EQUIPMENT LIST

The Municipality will furnish MDOT a list of the equipment it uses during performance under this Contract, on MDOT form 471 (Equipment Specifications and Rentals.) This form shall be uploaded to the Files page in MDOT's MLAP system.

SECTION 23: RECORDS TO BE KEPT

- A. The Municipality will establish and maintain accurate records, in accordance with generally accepted accounting principles of all expenses incurred for which payment is sought or made under this Contract, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under this Contract. The Municipality will retain the following RECORDS, and others, in accordance with generally accepted accounting principles:
1. Retain daily timecards or electronic timekeeping files for employees and equipment indicating the distribution of time to route sections and work items. Daily timecards must be signed by the employee, the immediate supervisor and by the timekeeper when the timekeeper is employed. If the Municipality uses crew-day cards, it will retain crew-day cards backed by a time record for the pay period signed as above, in lieu of daily individual timecards detailing the time distribution. If the Municipality uses electronic timekeeping, it will retain data files detailing time distribution and assigned supervisor approval.
 2. Retain properly signed material requisitions (daily distribution slips) which indicate type of material, quantity, units of measure, the date of distribution and the distribution to route sections and work items.
 3. Retain additional cost records to support and develop unit cost charges and percentages as applied to invoice costs. Cost records are not necessary in support of the overhead percentage or the five percent (5%) handling charge.
- B. The Municipality will maintain the RECORDS for at least three (3) years from the date of MDOT'S receipt of the statement of charges for the quarter ending September 30 of each year of this Contract period. In the event of a dispute regarding allowable expenses or any other issue under this Contract, the Municipality will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals for that decision has expired.

The Municipality will maintain all RECORDS supporting equipment usage from the time of equipment purchase to disposal to support any gain or loss from equipment disposed.

Representatives of MDOT may inspect, copy or review the RECORDS at any mutually acceptable time. However, the Municipality cannot unreasonably delay the timely performance of the review.

SECTION 24: COST CERTIFICATION, REIMBURSEMENT AND ADJUSTMENT

The Municipality hereby certifies that, to the best of the Municipality's knowledge, the costs reported to MDOT for this Contract will represent only those items which are properly chargeable in accordance with the Contract. The Municipality also hereby certifies that it has read the Contract terms and is aware of the applicable laws, regulations, and terms of the Contract that apply to the reporting of costs incurred under the terms of this Contract.

SECTION 25: CONTRACT REVIEW AND RESPONSE

- A. The Municipality's records will be subject to review within the statute of limitations, and the review period will coincide with the Municipality's fiscal year, unless the Contract is terminated or not renewed.

Charges by the Municipality for maintenance of state trunkline highways and authorized non-maintenance work performed under this Contract will not be adjusted (increased or decreased) by review after twenty-four (24) months subsequent to the date of MDOT'S receipt of certified statement of charges for the quarter ending September 30 of each year of this Contract period. This limitation will not apply in case of fraud or misrepresentation of material fact or if mutually agreed to in writing.

The firm unit prices for aggregates and bituminous materials that are processed and furnished by the Municipality will not be subject to adjustment.

If any adjustments are to be made, the Municipality will be notified of the tentative exceptions and adjustments within the above twenty-four (24) month period. The twenty-four (24) month period is intended only as a limitation of time for making adjustments and does not limit the time for payment of such amounts. In the event that a review performed by or on behalf of MDOT indicates an adjustment to the costs reported under this Contract or questions the allowability of an item of expense, MDOT will promptly submit to the Municipality a Notice of Review Results and a copy of the Review Report, which may supplement or modify any tentative findings communicated to the Municipality at the completion of a review.

- B. Within sixty (60) days after the date of the Notice of Review Results, the Municipality will submit to MDOT a written response, hereinafter referred to as the “Response”, to the Notice of Review Results indicating one of the following options:
1. The Municipality concurs with the Notice of Review Results and will either repay the amount of any overpayment to MDOT and/or or be reimbursed the amount of any underpayment by MDOT.
 2. The Municipality does not concur with Notice of Review Results. The “Response” will explain the nature and basis for any disagreement as to a disallowed item of expense, and/or,
 3. The “Response” will include a written explanation as to any questioned item of expense. The “RESPONSE” will be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned item of expense. Where the documentation is voluminous, the Municipality may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract.
 4. The Municipality agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to make a final decision to either allow or disallow any items of questioned cost.
- MDOT will review submitted RESPONSE and attached documentation from the Municipality. MDOT will reply in writing acknowledging receipt of the Municipality RESPONSE. The submitted RESPONSE and attached documentation from the Municipality will be referred to the MDOT Appeal Panel. See Section 26, “Dispute Resolution Process”.

SECTION 26: DISPUTE RESOLUTION PROCESS

A. Contract Disputes

For review disputes refer to Section 26 (B) below, all other disputes between the parties shall be resolved under the terms of this section. It is the intent that each party may communicate concerns relative to the contract and resolve any issues as they arise. After a contract issue has been resolved, a summary of the agreed upon resolution shall be jointly drafted and distributed. Some issues may require ongoing communication to resolve and may become an item for negotiation during the next review and renegotiation of the Contract.

If the parties are unable to resolve any dispute, the parties must meet with the Engineer of TSMO or designee. The following are steps to resolve the dispute without the need for formal legal proceedings:

- 1) The representative of the Municipality and MDOT must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter at issue which the parties believe to be appropriate and germane in connection with the dispute. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any legal proceeding.
- 2) During negotiations, all reasonable requests made by one party to another for non-privileged information reasonably related to the Contract shall be honored in order that each of the parties may be fully advised of the other's position.
- 3) The specific format for the discussions shall be left to the discretion of the designated Municipality and MDOT representatives but may include the preparation of agreed upon statement of fact or written statements of position.
- 4) Statements made by the Municipality or MDOT during Dispute Resolution may not be introduced as evidence by either party in any judicial action related to or under this Contract.
- 5) In cases where disputes have not been resolved, any remaining issues will be referred to the MDOT Appeal Panel which consists of four Bureau Directors, three of which will constitute a quorum.
- 6) Every effort will be made to complete this process within 90 calendar days by both parties.

B. Review Disputes

For review disputes the submitted "Response" and attached documentation from the Municipality will be referred to the MDOT Appeal Panel. The Appeal Panel consists of four Bureau Directors, three of which will constitute a quorum.

- 1) MDOT will provide the Municipality with an opportunity to appear before the Appeal Panel to explain and support their Response.
- 2) After an Appeal Panel written decision, the Municipality will either accept the decision or file a lawsuit in a court of proper jurisdiction to contest MDOT's decision. The filing of a lawsuit must be initiated by the Municipality within thirty (30) days of the receipt of the Appeal Panel's written decision. MDOT will not withhold or offset the funds in dispute if the Municipality files a lawsuit in a court of proper jurisdiction.

- 3) If the Municipality fails to repay an overpayment or reach an agreement with MDOT on a repayment schedule within the thirty (30) day period, the Municipality agrees that MDOT will deduct all or a portion of an overpayment from any funds due the Municipality by MDOT under the terms of this Contract.
- 4) Every effort will be made to complete this process within 60 calendar days by both parties.

This section shall not be construed to prevent either party from initiating, and a party is authorized to initiate, an action for breach of this Contract or for any other relief allowed by law earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to the other party, or under Injunctive Relief below. If a dispute is not resolved through the Dispute Resolution Process, either party may initiate an action for breach of this Contract, or any other relief allowed by law in a court of proper jurisdiction. Time periods may be extended if agreed upon by both parties.

Injunctive Relief

The only circumstance in which disputes between MDOT and the Municipality shall not be subject to the provisions of this Dispute Resolution Process is when a party makes a good faith determination that it will suffer irreparable harm due to a breach of the terms of the Contract by the other party and that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in Section 28.

SECTION 27: TERM OF CONTRACT

This Contract will be in effect from October 1, 2024 through September 30, 2029.

SECTION 28: CONTRACT TERMINATION OR EXPIRATION

- A. For convenience, MDOT may terminate this Contract by providing written notice to the Municipality at least two (2) years prior to the beginning of the Contract year to which the termination, applies.

The Municipality may terminate this Contract by providing written notice to MDOT at least two (2) years prior to the beginning of the Contract year to which the termination applies.

In the event either party provides notice of an intent to terminate the Contract as provided in this subsection, the Contract shall terminate at the beginning of the Contract year (October 1), two years following the date of the notice. For greater clarity, the parties do not intend for the Contract to terminate as of the date of the notice. Notwithstanding any other provision to the contrary, if a party provides notice of its intent to terminate the Contract as provided in this subsection and the Contract will expire before the two-year notice period has lapsed, the parties agree that the Contract shall be automatically renewed and continue in full force and effect until October 1, two years following the date of the notice.

- B. If a new Contract has not been executed by the parties within 120 days following the expiration of this Contract, this Contract shall be deemed automatically renewed as of the date of expiration and continue in full force and effect for two years following such date. After those two years have lapsed, the Contract shall be deemed terminated.
- C. Notwithstanding any provision of this Contract to the contrary, upon termination of this Contract “for cause”, the Municipality must, for a period of time specified by MDOT (not to exceed 90 calendar days), provide all reasonable transition assistance requested by MDOT, to allow for the terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to MDOT or its designees. This Contract will automatically be extended through the end of the transition period.

SECTION 29: STATE OF MICHIGAN ADMINISTRATIVE BOARD RESOLUTION

The provisions of the State Administrative Board Resolution 2017-2, April 25, 2017, are set forth in Appendix D, attached hereto and made a part hereof.

SECTION 30: CONTRACTUAL INTERPRETATION

All capitalized words and phrases used in this Contract have the meaning set forth in Appendix A.

All words and phrases not specifically defined in Appendix A shall be construed and understood according to the ordinary meaning of the words used, but technical words and phrases shall have the meanings set forth in MDOT's publications, manuals, advisories, or guides, as applicable. If no MDOT publication, manual, advisory or guide is applicable, such technical words shall be construed and understood according to the usual and accepted meaning used in the industry or field to which they relate and any words or phrases that have a specialized meaning in the law, shall be construed and understood according to such specialized meaning.

SECTION 31: AUTHORIZED SIGNATURE

This Contract will become binding on the parties and of full force and effect upon signing by the duly authorized official of the Municipality and of MDOT and upon adoption of a resolution approving said Contract and authorizing the signature thereto of the respective official of the Municipality, a certified copy of which resolution will be sent to MDOT with this Contract, as applicable.

CITY OF MUSKEGON

BY: _____
TITLE:



MICHIGAN DEPARTMENT OF TRANSPORTATION

BY: _____
TITLE: MDOT Director

APPENDIX A

DEFINITIONS

Annual Work Plan: A schedule developed by the Municipality and Region Engineer's designee of the routine maintenance work to be performed annually on state trunklines by the Municipality.

Budget: The funds allocated to the Municipality for the fiscal year beginning October 1. Budget may also be referred to as Annual Budget or Field Activity Budget or Maintenance Budget.

Chemical Storage Facilities: Bulk salt storage buildings.

Competitive Bidding: A procurement process that involves advertising work so that qualified vendors can submit bids to perform the work. The contract is then awarded to the lowest qualified bidder.

Contract Administrator: An individual designated by the Municipality responsible for supervising all work covered under this Contract.

Department: The Michigan Department of Transportation.

Engineer of Transportation System Management and Operations (TSMO): The Department's designated engineer of TSMO.

Equipment Questionnaire: A report prepared by the Municipality and forwarded to the Department to substantiate the previous year's actual equipment costs.

Foremen: A person(s) designated by the Municipality responsible for overseeing all work covered under this Contract and is responsible to the Contract Administrator.

Maintenance Work: Routine activities performed on a regular basis or in response to uncontrollable events upon the state trunklines. Also includes planned activities to state trunklines to preserve functional condition and any work authorized by a TWA.

Maintenance of State Trunkline highways/lane miles maintained: The Municipality is to provide the winter and non-winter maintenance activities on its miles as identified within the work plan.

Michigan State Transportation Commission: The policy-making body for all state transportation programs. The Commission establishes policy for the Michigan Department of Transportation in relation to transportation programs and facilities and other such works as related to transportation development as provided by law. Responsibilities of the Commission include the development and implementation of comprehensive transportation plans for the entire state, including aeronautics, bus and rail transit, providing professional and technical assistance, and overseeing the administration of state and federal funds allocated for these programs.

Non-Winter Maintenance Budget: The portion of the Budget allocated to non-winter maintenance activities.

Office of Commission Audit (OCA): The office that reports directly to the Michigan State Transportation Commission. The Office of Commission Audits is charged with the overall responsibility to supervise and conduct review activities for the Department of Transportation. The auditor submits to the Commission reports of financial and operational audits and investigations performed by staff for acceptance.

Region Engineer: The Department's designated chief engineer responsible for the oversight of each region of the Department or that region's designee.

Review: A financial statement review is a service under which the accountant obtains limited assurance that there are no material modifications that need to be made to an entity's financial statement for them to be in conformity with the applicable financial reporting framework. OCA's review will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Governmental Auditing Standards* issued by the Comptroller General of the United States. A review consists primarily of inquiries of personnel and the application of analytical procedures to data.

Schedule C Equipment Rental Rates: The department's annual list of statewide hourly equipment rental rates that shall be charged for the use of road equipment calculated from the average costs submitted by each agency in the "Equipment Questionnaire".

Small Road Tools: Hand tools which do not have power assist (non-powered) used for general road and bridge maintenance such as rakes, shovels, brooms, etc.

Small Power Tools: Work tools powered by electricity or battery power and have a rental rate assigned.

State Administrative Board: A Board that consists of the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and the Superintendent of Public Instruction. The DTMB designates a Secretary to the State Administrative Board and provides for staff support. The State Administrative Board has general supervisory control over the administrative activities of all state departments and agencies, including but not limited to, the approval of contracts and leases, oversight of the state capital outlay process and the settlement of small claims against the state. The State Administrative Board functions through three standing committees (Finance and Claims, Building, Transportation and Natural Resources) which make recommendations to the Board. The State Administrative Board meets the first and third Tuesday of each month.

State Trunkline Highway: A road, highway, or freeway under the jurisdiction of the Department, and usually numbered as an M, US, or Interstate Route.

Termination for Cause: The exercise of MDOT's right to terminate this Contract "for cause", in whole or in part, if the Municipality, as determined by MDOT: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose MDOT to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

Termination Date: The date the contract is no longer effective.

Transportation Work Authorization (TWA): A written order for work not covered by the Budget. Funding for the TWA is reimbursed to the Municipality in addition to the annual Budget.

Transportation and Natural Resources Committee: A committee that approves the award of Michigan Department of Transportation (MDOT) contracts and agreements; Department of Natural Resources (DNR) oil, gas, and mineral leases; conveyance of submerged lands. The committee meets the Wednesday before the State Administrative Board meeting. The agenda is prepared by MDOT and DNR.

Winter Maintenance: Maintenance Work centered on the process to remove snow and ice from the trunkline to provide a reasonably clear and bare driving surface under prevailing winter conditions. The activity numbers that define the Budget line items for winter maintenance are:

1410: Winter maintenance

1440: Winter road patrol (*See winter maintenance patrol below*)

1490: Other winter maintenance (*Shall include maintenance items resulting from winter maintenance, but not actual winter maintenance, i.e. sweeping and flushing immediately after winter ends*)

This work includes all material costs required to conduct work under the above activity numbers.

Winter Maintenance Patrol: An employee assigned to monitor state trunkline road conditions during the winter at times outside the normal workday, i.e. 2nd or 3rd shift.

Work Plan: An annual outline of maintenance activities to be performed under this Contract. The components of the plan include the amount of Budget allocated to each routine maintenance activity group, a list of prioritized maintenance activities, and may include a proposed timeframe for completion.

APPENDIX B

MICHIGAN DEPARTMENT OF TRANSPORTATION

MUNICIPALITY CONTRACT

OVERHEAD SCHEDULE

Effective October 1, 2024, through September 30, 2029

Original Annual Budget Amount	Percent Allowed for Overhead	Percent Allowed for Small Tools	Total Percent Allowed
Up to \$25,000_____	11.00_____	.50_____	11.50
\$25,001 to \$50,000 _____	10.25_____	.50_____	10.75
\$50,001 to \$75,000 _____	9.50_____	.50_____	10.00
\$75,001 to \$100,000 _____	8.75_____	.50_____	9.25
\$100,001 and over _____	8.00_____	.50_____	8.50

APPENDIX C

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

APPENDIX D

**STATE ADMINISTRATIVE BOARD
RESOLUTION 2017-2
PROCEDURES APPLICABLE TO MDOT CONTRACTS AND GRANTS
AND
RECISSION OF RESOLUTION 2011-2**

WHEREAS, the State Administrative Board (“Board”) exercises general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of this State, and of all State institutions pursuant to Section 3 of 1921 PA 2, MCL 17.3;

WHEREAS, the Board may adopt rules governing its procedures and providing for the general conduct of its business and affairs pursuant to Section 2, of 1921 PA 2, MCL 17.2;

WHEREAS, exercising its power to adopt rules, the Board adopted Resolution 2011-2 on August 30, 2011, establishing a \$500,000 or more threshold for Board approval of the Michigan Department of Transportation (“MDOT”) Professional Engineering Consultant Contracts and Construction Contracts and increasing the threshold for Board approval for Service Contracts to \$250,000 or more for initial contracts and \$125,000 or more for an amendment to a Service Contract;

WHEREAS, the Board has adopted Resolution 2017-1, raising the threshold for Board approval of contracts for materials and services to \$500,000 or more for the initial contract and \$500,000 or more for contract amendments, and rescinding Resolution 2011-1;

WHEREAS, MDOT is a party to a considerable number of contracts, the majority of which are funded via grants administered by federal agencies including the U.S. Department of Transportation’s Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, and Federal Aviation Administration, which oversee MDOT’s administration of such contracts and amendments thereto;

WHEREAS, MDOT has implemented internal procedures to assure the proper expenditure of state and federal funds and is subject to financial and performance audits by the Office of Commission Audits pursuant to 1982 PA 438, MCL 247.667a;

WHEREAS, MDOT is a party to a significant number of contracts which by their nature involve substantial consideration and often require amendments arising out of changes in scope, differing field conditions and design errors and omissions;

WHEREAS, delays in the approval of amendments to contracts can result in postponement of payments to subcontractors and suppliers; work slowdowns and stoppages; delays in the completion of projects; exposure to additional costs; and exposure to litigation arising out of contractor claims; and

WHEREAS, recognizing the Board's duty to promote the efficiency of State Government, the Board resolves as follows:

1. Resolution 2011-2 is rescinded.
2. A contract for professional design, engineering or consulting services requiring MDOT prequalification in connection with the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Professional Engineering Consultant Contract") or a contract for the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Construction Contract") must be approved by the Board prior to execution by MDOT if the amount of the contract is \$500,000 or more. MDOT may obtain approval of the solicitation of a Professional Engineering Consultant Contract or a Construction Contract which, based on the estimate prepared by an engineer employed by the State of Michigan, is estimated to be \$500,000 or more. A contract arising out of such solicitation must be approved by the Board prior to execution by MDOT if the amount of the contract exceeds 110% of the State engineer's estimate.
3. An amendment to a Professional Engineering Consultant Contract or a Construction Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments exceed 10% of the original contract, except that an amendment to a Professional Engineering Consultant Contract or a Construction Contract need not be approved by the Board if: a) approved in accordance with applicable federal law or procedure by a representative of a federal agency contributing funds to the project that is the subject of the contract; or b) approved in accordance with MDOT's internal procedures provided the procedures include approval by at least one MDOT employee who has managerial responsibility and is neither the project manager nor directly involved in the administration of the project.
4. A contract for services not requiring MDOT prequalification ("Service Contract") in the amount of \$500,000 or more must be approved by the Board prior to execution by MDOT. A Service Contract does not include a Professional Engineering Consultant Contract or a Construction Contract.
5. An amendment to a Service Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments total \$500,000 or more. Thereafter, an amendment to a Service Contract must be approved by the Board if the amount of the amendment and

the sum of all amendments executed after the most recent Board approval total \$500,000 or more.

6. A contract involving the conveyance of any real property interest under the jurisdiction of MDOT must be approved by the Board prior to execution by MDOT if the fair market value of the interest is \$500,000 or more. Fair market value must be determined in accordance with procedures approved by the State Transportation Commission.

7. MDOT may enter into a contract with a sub-recipient without approval of the Board if: a) the purpose of the contract is to provide federal or state matching funds for a project; b) MDOT has been authorized by an agency administering any federal funds to award them to the sub-recipient; and c) the sub-recipient has agreed to fully reimburse the State in the event the sub-recipient does not use the funds in accordance with the purpose of the funding. A sub-recipient includes, but is not limited to, a local unit of government, a governmental authority, a private non-profit entity, and a railroad or rail service provider.

8. MDOT may enter into a cost participation contract with a local unit of government without approval of the Board if: a) the contract involves the construction or physical improvement of a street, road, highway, bridge or other structure congruous with transportation; b) the construction or improvement is funded by federal, state or local funds; and c) the contract is approved by each entity providing funds or in accordance with applicable law.

9. MDOT may enter into a contract in connection with the award of a grant including state matching funds, to a local unit of government, a governmental authority, a private non-profit entity, a railroad or a rail service provider, without approval of the Board if the contract provides that the recipient will fully reimburse the State in the event grant funds are not used in accordance with the terms of the grant.

10. MDOT may enter into a contract with an airport sponsor without approval of the Board if the contract has been approved by the Michigan Aeronautics Commission.

11. MDOT may enter into a contract or award a grant without approval of the Board in situations where emergency action is required. For all emergency contracts or grants of \$250,000 or more, MDOT must transmit to the Board a written report setting forth the nature of the emergency and the key terms of the contract or grant within 30 days of executing the contract or awarding the grant.

12. Notwithstanding any provisions of this resolution, the Board may require MDOT to report the status of any project and may require MDOT to obtain Board approval of any contract, grant or any amendment to a contract.

This Resolution is effective April 25, 2017.



APPENDIX E

SUBCONTRACT REQUIREMENTS

SUMMARY OF STATE ADMINISTRATIVE BOARD REQUIREMENTS FOR AMENDMENTS (PREVIOUSLY REFERRED TO AS OVERRUNS, EXTRA'S AND ADJUSTMENTS)

Administrative Board Resolution (2017-2, April 25, 2017)

State Administrative Board approval is required on all contracts (including subcontracts) when the sum of the contract including any optional year(s) is \$500,000 or greater.

Amendments

Subcontract Requirements:	Amendment Amount	State Administrative Board (SAB) Approval Requirements:
• Region Engineer approval required prior to start of work. • Form 426 must be signed by the Region Engineer. • Documentation of amendment is required by the Municipality. • Send revised Form 426 to the Transportation Systems Management Operations (TSMO), Contract Specialist for review and approval prior to the start of work.	\$499,999 or less	Not required Note: Emergency contracts \$250,000 or greater require SAB approval.
	\$500,000 or greater	Required prior to the start of work. Note: When the sum of the contract and all amendments total \$500,000 or greater, SAB approval is required.

Definition of Term: Amendment includes situations where the original contract quantity or contract cost is exceeded. It also includes situations where quantities or work are added to the original contract as extra's or adjustments.

January 30, 2024



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

BRADLEY C. WIEFERICH, P.E.
DIRECTOR

APPENDIX F

SAMPLE: Letter of Understanding

Date

Contract Agency Name

Address

Contact Person, Title

RE: Letter of Understanding for State Trunkline Maintenance Contract between Michigan Department of Transportation (MDOT) and the (insert name of contract agency)

Dear _____:

This Letter of Understanding is in follow up to our recent meeting held on _____ and will serve as a reference to clarify the Scope of Work set forth in Section 1, of the State Trunkline Maintenance Contract.

The Scope of Work will be limited to (insert type of work activities and frequency of work to be performed) on the state trunkline (indicate routes) in the City (or Village) of _____. The work activities are to be conducted by the City (Village) as a part of the Contract with MDOT.

The Scope of Work shall include traffic control to perform the work.

Reimbursement for Snow Hauling will be limited to (insert agreed upon snow hauling parameters) and will be reimbursed at (insert snow hauling rate)% of the total costs of snow hauling. For any additional snow hauling outside of these parameters, MDOT will not participate in the cost unless written approval is received prior to the snow hauling. The Municipality Snow Hauling Calculation form (Appendix H) is attached.

Request for reimbursement of the Scope of Work activities identified herein shall be in accordance with Section 16 of the Contract. Payment for items with Firm Unit Prices will be in accordance with the attached Municipality Firm Unit Prices form (Appendix G) attached.

Subcontracting of any work activities shall be in accordance with Section 9 of the Contract.

Name
Page 2
Date

Please sign each of the two original letters enclosed. Please keep one copy for your records and return the other copy to my attention.

Sincerely,

Name
Maintenance Coordinator (or Engineer)
MDOT ____TSC

APPROVED BY:

City (Village) of _____ agrees to the terms and conditions stated in this agreement.

Dated this _____ day of _____, 2024

Name, Title

APPROVED BY:

Region Engineer
Michigan Department of Transportation

Date _____

Appendix G

Michigan Department
of Transportation
0572 (03/2024)

MUNICIPALITY FIRM UNIT PRICES

Clear Form

MUNICIPALITY NAME	EFFECTIVE DATE
-------------------	----------------

TYPE OF MATERIALS PRODUCED OR SUPPLIED	UNIT OF MEASURE	UNIT PRICE	ITEM LOCATION	PRICE INCLUDES

INSERT ABOVE, THE FOLLOWING APPLICABLE NUMBER(S):

Type of Materials produced or supplied by Municipality

- 1. Aggregate
- 2. Winter Sand
- 3. Salt
- 4. Other (Describe):

Item Locations

- 1. Pit Site
- 2. Yard
- 3. Other (Describe):

Price Includes

- 1. Processing or Mixing Costs
- 2. Stockpiling or Hauling to Stockpile Costs
- 3. Royalty Costs
- 4. Municipal Supplied Salt or Calcium Chloride (when used in a winter salt/sand mixture)
- 5. Winter Sand
- 6. Bituminous Costs
- 7. Other (Describe):

MUNICIPALITY SUBMITTED BY		
NAME	TITLE	DATE

MDOT APPROVED BY		
NAME	TITLE	DATE

Appendix H

Michigan Department
of Transportation
5191 (02/2024)

MUNICIPALITY SNOW HAULING CALCULATION FORM

Clear Form
Definitions

MUNICIPALITY NAME	ROUTE	EFFECTIVE DATE
-------------------	-------	----------------

SKETCH OF ROADWAY AND SNOW HAULING LIMITS

TOTAL WIDTH OF SNOW HAULING (WSH) ft	WIDTH OF AREA DESIGNATED FOR TRAFFIC MOVEMENT (ADTM) ft
SNOW HAULING RATE (SHR): $SHR = ADTM / WSH \%$ SHR: _____ / _____ = _____ %	

MUNICIPALITY SUBMITTED BY	
NAME	TITLE

MDOT APPROVED BY	
NAME	TITLE

DEFINITIONS

Total Width of Snow Hauling (WSH): Total width of the roadway, parking lanes, and sidewalks from which snow will be removed during snow hauling operations.

Width of Area Designated for Traffic Movement (ADTM): The portion of the highway right-of-way that is intended for traffic movement. The ADTM does not include parking lanes, sidewalks, or buffer areas that are part of the right-of-way.

Sample Calculation

Total road right-of-way is 66 feet, which includes three 12-foot lanes, two 8-foot parking lanes, and 7 feet of sidewalk and buffer space on each side of the roadway. No snow will be hauled from the area beyond the sidewalks.

WSH: 66 feet

ADTM: 36 feet

Snow Hauling Rate: $36 \text{ feet (ADTM)} / 66 \text{ feet (WSH)} = 55\%$

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Concur with CRC Recommendation to Accept Resignation and Make Appointments															
Submitted by: Ann Meisch, City Clerk	Department: City Clerk															
Brief Summary: To concur with CRC recommendation to accept the resignation of Doug Pollock from the DDA/BRA and to appoint JoAnn Dornbos with a term ending 1-31-27. To appoint Yancy Weaver to the Parks and Recreation Advisory Committee, resident of Ward 2; and appoint Cami Horn to the Citizen's District Council-CDBG, citizen of Ward 1.																
Detailed Summary & Background:																
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u>																
Amount Requested:	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X									
Yes		No		N/A	X											
Fund(s) or Account(s):	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X									
Yes		No		N/A	X											
Recommended Motion: To concur with CRC recommendation to accept the resignation of Doug Pollock from the DDA/BRA and appoint JoAnn Dornbos, appoint Yancy Weaver to the Parks and Recreation Advisory Committee, and appoint Cami Horn to the Citizen's District Council-CDBG.																
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td></td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr><tr><td>Other Division Heads</td><td></td><td></td></tr><tr><td>Communication</td><td></td><td></td></tr><tr><td>Legal Review</td><td></td><td></td></tr></table>	Immediate Division Head			Information Technology			Other Division Heads			Communication			Legal Review			Guest(s) Invited / Presenting: No
Immediate Division Head																
Information Technology																
Other Division Heads																
Communication																
Legal Review																

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Sale of 1431 Hoyt															
Submitted by: Samantha Pulos, Code Coordinator	Department: Planning															
Brief Summary: Staff is requesting approval of a purchase agreement for 1431 Hoyt for \$149,900.																
Detailed Summary & Background: 1431 Hoyt was constructed through the agreement with Dave Dusendang to construct infill housing with ARPA funding. The offer is full listing price with no seller concessions.																
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Key Focus Area: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business																
Amount Requested: n/a	Budgeted Item: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;"></td> <td style="width: 15%;">No</td> <td style="width: 15%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">x</td> <td style="width: 15%;"></td> </tr> </table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Fund(s) or Account(s): n/a	Budget Amendment Needed: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;"></td> <td style="width: 15%;">No</td> <td style="width: 15%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">x</td> <td style="width: 15%;"></td> </tr> </table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Recommended Motion: To approve the Purchase Agreement for 1431 Hoyt for \$149,900 and authorize the Code Coordinator, Samantha Pulos, to sign.																
Approvals: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Immediate Division Head</td> <td style="width: 10%; text-align: center;">x</td> <td style="width: 20%;"></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td style="text-align: center;">x</td> <td></td> </tr> <tr> <td>Communication</td> <td></td> <td></td> </tr> <tr> <td>Legal Review</td> <td></td> <td></td> </tr> </table>	Immediate Division Head	x		Information Technology			Other Division Heads	x		Communication			Legal Review			Guest(s) Invited / Presenting: No
Immediate Division Head	x															
Information Technology																
Other Division Heads	x															
Communication																
Legal Review																

Back to search

Zillow

♡

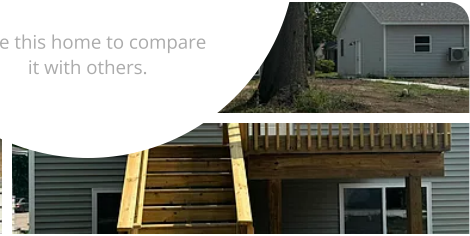
Hide

⋮

Pending



Save this home to compare it with others.







See all 20 photos

\$149,900

1431 Hoyt St, Muskegon, MI 49442

Est.: \$901/mo

Get pre-qualified

Single Family Residence

Built in 2024

5,662 sqft lot

\$148,100 Zestimate®

\$184/sqft

\$-- HOA

22 beds

22 baths

816816 sqft

What's special

This new home in the city of Muskegon is ready for you to move in. It is close to highways and all the activities that Muskegon has to offer. This home must be owner occupied

38 days on Zillow | 80 views | 2 saves

Zillow last checked: 3 hours ago
Listing updated: August 15, 2024 at 12:19pm
Listed by: Brent T Cox 616-717-1220, West Urban Realty LLC 616-717-1220
Source: MichRIC, MLS#: 24041305

https://www.zillow.com/homes/1431-Hoyt-St-Muskegon,-MI-49442_rb/24298878_zpid/

Page 82 of 222

112

WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE:

08/08/2024

(time)

MLS #

24041305

SELLING OFFICE:

Five Star Real Estate

BROKER LIC.#:

REALTOR® PHONE:

2312153242

LISTING OFFICE:

West Urban Realty LLC

REALTOR® PHONE:

1. **Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, 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. Any reference to "time" refers to local time.

2. **Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the *Disclosure Regarding Real Estate Agency Relationships*. The selling licensee is acting as (choose one):

☐ Agent/Subagent of Seller

☒ Buyer's Agent

☐ Dual Agent (with written, informed consent of both Buyer and Seller)

☐ Transaction Coordinator

Primary Selling Agent Name:

Timothy Updyke

Email:

timupdykerealty@gmail.com

Lic.#:

6501410013

Alternate Selling Agent Name:

Email:

Lic.#:

3. **Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)

☒ Buyer has received the *Seller's Disclosure Statement*, dated 08/08/2024.

☐ Buyer has not received the *Seller's Disclosure Statement*. Buyer may terminate this Agreement, in writing, any time prior to receipt of the *Seller's Disclosure Statement*. Once Buyer has received the *Seller's Disclosure Statement*, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions:

☐ Seller is exempt from the requirements of the Seller Disclosure Act.

4. **Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.

5. **Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of Muskegon

County of Muskegon, Michigan, commonly known as (insert mailing address: street/city/state/zip code)

1431 Hoyt St, Muskegon, MI 49442

with the following legal description and tax parcel ID numbers:

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 273 N 42.83 FT LOT 16

PP#

6124205273001600

The following paragraph applies only if the Premises include unplatted land:

Seller agrees to grant Buyer at closing the right to make (insert number) division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before, of the proposed division to create the Premises.

6. **Purchase Price:** Buyer offers to buy the Property for the sum of \$ 149,900

one hundred forty-nine thousand nine hundred U.S. Dollars

7. **Seller Concessions**, if any:

None

8. **Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)

SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.

☐ CASH. The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.

☒ NEW MORTGAGE. The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a Conventional type 30 (year) mortgage in the amount of 95 % of the Purchase Price bearing interest at a rate not to exceed 6.5 % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within 2 days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☐ Buyer will agree to pay an amount not to exceed \$ representing repairs required as a condition of financing. Buyer ☒ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from

©Copyright, West Michigan REALTOR® Associations
Page 1 of 6 Rev. Date 1/2024

08/08/24

7:19 PM EDT

dotloop verified

Buyer's Initials

08/12/24

5:58 PM EDT

dotloop verified

Seller's Initials

Page 83 of 222

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$_____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$ _____ will be payable in monthly installments of \$ _____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$ _____) between the Purchase Price above provided and the unpaid balance (approximately \$ _____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ OTHER: _____

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

- ☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.
- ☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

but does not include:

1431 Hoyt St, Muskegon, MI 49442
Subject Property Address/Description

08/08/2024
Date Time

11. Heating and Cooking Fuels: Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

12. Assessments (choose one):

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required for future connection to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. Property Taxes: Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

14. Well/Septic: Within ten (10) days after the Effective Date, (choose one) ☐ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other:

NA city water & Sewer

15. Inspections & Investigations:

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 10 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

1431 Hoyt St, Muskegon, MI 49442
 Subject Property Address/Description

08/08/2024
 Date

Time

accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions:

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions:

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☐ Buyer or ☐ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☒ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 09/06/2024. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee**. Exceptions:

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At _____ ☐ a.m. ☐ p.m. on the _____ day **after** completion of the closing of the sale, during which time Seller will have the privilege to occupy the Property and hereby agrees to pay Buyer \$ _____ as an occupancy fee for this period payable at closing, WITHOUT PRORATION. Payment shall be made in the form of cash or certified funds.

1431 Hoyt St, Muskegon, MI 49442
Subject Property Address/Description

08/08/2024
Date

Time

For purposes of determining possession, the transaction will be considered closed once all necessary documents have been signed and received by escrow agent and funds have been received by the escrow agent.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ _____ per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Seller shall also be responsible for snow removal and/or landscape maintenance. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer.

In the event of possession by Seller after close, Buyer and Seller ☐ agree ☐ do not agree to sign the West Michigan Regional Temporary Occupancy Addendum to the Purchase Agreement. If signed, that Addendum shall become an integral part of this Agreement.

Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until 08/12/2024 (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$ 1000 shall be submitted to Five Star Real Estate (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Buyer is entitled to a refund of the Earnest Money Deposit. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.

25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.

26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.

27. **Other Provisions:**

28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.

29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.

1431 Hoyt St, Muskegon, MI 49442
Subject Property Address/Description

08/08/2024
Date

Time

30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' 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.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address

X

Isak Davis

dotloop verified
08/08/24 7:19 PM EDT
QJOC-TYID-178Z-VKSQ

Buyer

Buyer 1 Phone: (Res.)

(Bus.)

Isak Davis

Print name as you want it to appear on documents.

Buyer 2 Address

X

Buyer

Buyer 2 Phone: (Res.)

(Bus.)

Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☐ As written. ☐ As written except:
The seller will provide a quit claim deed VS a warranty deed. The buyer acknowledges they have signed and will abide by the city of Muskegon's addendum for the builder's warranty and landscaping requirements. The home must be owner occupied.

Counteroffer, if any, expires, _____, at _____ (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated _____ (choose one): ☐ Yes ☐ No.
Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. Listing Office Address:

Listing Broker License #

Listing Agent Name:

Brent Cox

Listing Agent License #

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time):

Sam Pulos

dotloop verified
08/08/24 7:34 AM EDT
IG00-RRIS-CH91-66BQ

Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Print name as you want it to appear on documents.

X (Seller's Signature, Date, Time):

Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Print name as you want it to appear on documents.

Seller's Address:

Seller's Phone (Res.):

(Bus.)

* If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time):

X (Buyer's Signature, Date, Time):

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counteroffer.

X (Seller's Signature, Date, Time):

Sam Pulos

dotloop verified
08/08/24 7:34 AM EDT
F400-TY007-6476-001

X (Seller's Signature, Date, Time):

1431 Hoyt St, Muskegon, MI 49442

08/08/2024

Subject Property Address/Description

Date

Time

Please read and have buyer/s sign. Attach with offer

Paragraph 8- Seller will provide a quit claim deed vs a warranty deed.

The builder's one-year warranty starts from the day of Certificate of Occupancy.

Buyer shall bring dwelling unit into compliance with the following per the city's Zoning Ordinance: Each dwelling unit shall have an approved established vegetative ground cover, native to the immediate area within 600 feet, no less than 12 months after occupancy. Approval shall be given by the zoning staff of the Planning Department as part of the initial residential site plan review. A minimum of one shade tree, two and one-half inches (2.5") in diameter, four feet (4') from the ground or one six-foot (6') evergreen tree shall be provided. Existing landscaping may be accepted in lieu of this requirement. The buyer shall be responsible for watering and maintaining vegetation.

<i>Isak Davis</i>	dotloop verified 08/08/24 7:34 PM EDT Q078-SCEV-YIH9-USYH
-------------------	---

Buyer

Buyer

<i>Timothy Alan Urdyke</i>	dotloop verified 08/08/24 7:25 PM EDT WBET-7ZTC-CIWZ-8GDK
----------------------------	---

Buyer's Agent

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Sale of 1441 Hoyt															
Submitted by: Samantha Pulos, Code Coordinator	Department: Planning															
Brief Summary: Staff is requesting approval of a purchase agreement for 1441 Hoyt for \$150,000.																
Detailed Summary & Background: 1441 Hoyt was constructed through the agreement with Dave Dusendang to construct infill housing with ARPA funding. The offer is over full listing price with no seller concessions.																
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Key Focus Area: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business																
Amount Requested: n/a	Budgeted Item: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;"></td> <td style="width: 15%;">No</td> <td style="width: 15%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">x</td> <td style="width: 15%;"></td> </tr> </table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Fund(s) or Account(s): n/a	Budget Amendment Needed: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;"></td> <td style="width: 15%;">No</td> <td style="width: 15%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">x</td> <td style="width: 15%;"></td> </tr> </table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Recommended Motion: To approve the Purchase Agreement for 1441 Hoyt for \$150,000 and authorize the Code Coordinator, Samantha Pulos, to sign.																
Approvals: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Immediate Division Head</td> <td style="width: 10%; text-align: center;">x</td> <td style="width: 20%;"></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td style="text-align: center;">x</td> <td></td> </tr> <tr> <td>Communication</td> <td></td> <td></td> </tr> <tr> <td>Legal Review</td> <td></td> <td></td> </tr> </table>	Immediate Division Head	x		Information Technology			Other Division Heads	x		Communication			Legal Review			Guest(s) Invited / Presenting: No
Immediate Division Head	x															
Information Technology																
Other Division Heads	x															
Communication																
Legal Review																



Pending

\$149,900

1441 Hoyt St, Muskegon, MI 49442

2 beds 1 baths 816 sqft

Contact agent

Est.: \$901/mo Get pre-qualified

Single Family Residence	Built in 2024	5,227 sqft lot
\$149,300 Zestimate®	\$184/sqft	\$-- HOA

What's special

Come see this quality built new home its ready to move into its close to highways and all the activities that Muskegon has to offer. This home must be owner occupied

21 days on Zillow | 386 views | 27 saves

Zillow last checked: 3 hours ago
Listing updated: August 26, 2024 at 03:53pm
Listed by: Brent T Cox 616-717-1220, West Urban Realty LLC 616-717-1220
Source: MichRIC, MLS#: 24044628

WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE: 08/21/24, 5:00 pm (time) MLS # #
SELLING OFFICE: Redfin - Alantha Owen BROKER LIC.#: 6502414624 REALTOR® PHONE: 616-401-5995
LISTING OFFICE: West Urban Realty LLC REALTOR® PHONE: 616-717-1220

1. **Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, 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. Any reference to "time" refers to local time.
2. **Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the *Disclosure Regarding Real Estate Agency Relationships*. The selling licensee is acting as (choose one):
☐ Agent/Subagent of Seller ☒ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator
Primary Selling Agent Name: Alantha Owen Email: alantha.owen@redfin Lic.#: 6505384746
Alternate Selling Agent Name: _____ Email: _____ Lic.#: _____
3. **Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)
☐ Buyer has received the *Seller's Disclosure Statement*, dated _____.
☐ Buyer has not received the *Seller's Disclosure Statement*. Buyer may terminate this Agreement, in writing, any time prior to receipt of the *Seller's Disclosure Statement*. Once Buyer has received the *Seller's Disclosure Statement*, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions: _____
☒ Seller is exempt from the requirements of the Seller Disclosure Act.
4. **Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.
5. **Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of Muskegon,
County of Muskegon, Michigan, commonly known as (insert mailing address: street/city/state/zip code)
1441 Hoyt St, Muskegon, MI 49442
with the following legal description and tax parcel ID numbers:
DIST:24 SUBD:CITY OF MUSKEGON REVISED PLAT (OF 1903) SEC/TWN/RNG/MER:SEC 05 TWN 9N
RNG 17W CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 273S 42.83 FT LOT 15
PP#61-24-205-273-0015-00
- The following paragraph applies only if the Premises include unplatted land:**
Seller agrees to grant Buyer at closing the right to make (insert number) _____ division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before _____, of the proposed division to create the Premises.
6. **Purchase Price:** Buyer offers to buy the Property for the sum of \$ 150,000.00
One hundred fifty thousand dollars ***SEE ESCALATION CLAUSE, LINE 27 U.S. Dollars
7. **Seller Concessions**, if any: None

8. **Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.

- ☐ CASH. The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.
- ☒ NEW MORTGAGE. The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a CONV type 30 (year) mortgage in the amount of 97 % of the Purchase Price bearing interest at a rate not to exceed MR % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within 5 days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☒ Buyer will agree to pay an amount not to exceed \$ 0.00 representing repairs required as a condition of financing. Buyer ☒ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from _____

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

- ☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$_____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$ _____ will be payable in monthly installments of \$ _____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

- ☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$ _____) between the Purchase Price above provided and the unpaid balance (approximately \$ _____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

- ☐ OTHER:

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.

- ☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

- ☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

but does not include:
None

1441 Hoyt St, Muskegon, MI 49442

Subject Property Address/Description

Initial


☐ Buyer's Initials

08/21/24

Date

5:00 pm

Time


08/26/24
8:35 AM EDT
dotloop verified

☐ Seller's Initials

11. **Heating and Cooking Fuels:** Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:
None

12. **Assessments (choose one):**

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required for future connection to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. **Property Taxes:** Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

14. **Well/Septic:** Within ten (10) days after the Effective Date, (choose one) ☐ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other: Seller confirms that the home is connected to municipal water & sewer

15. **Inspections & Investigations:**

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 5 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

1441 Hoyt St, Muskegon, MI 49442

Subject Property Address/Description

Initial
 ☐ Buyer's Initials

08/21/24

Date

5:00 pm

Time

 ☐ Seller's Initials

08/26/24
8:35 AM EDT
dotloop verified

accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions: None

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions:

None

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☒ Buyer or ☐ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☐ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

Seller to provide survey, if one is available

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

Seller to provide details of builder's warranty within 10 days of offer acceptance

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 09/13/24. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee.** Exceptions:

None

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At _____ ☐ a.m. ☐ p.m. on the _____ day **after** completion of the closing of the sale, during which time Seller will have the privilege to occupy the Property and hereby agrees to pay Buyer \$ _____ as an occupancy fee for this period payable at closing, **WITHOUT PRORATION.** Payment shall be made in the form of cash or certified funds.

1441 Hoyt St, Muskegon, MI 49442

Subject Property Address/Description

Initial
 ☐ Buyer's Initials

08/21/24 5:00 pm
Date Time
 ☐ Seller's Initials
08/26/24
8:35 AM EDT
dotloop verified

For purposes of determining possession, the transaction will be considered closed once all necessary documents have been signed and received by escrow agent and funds have been received by the escrow agent.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ 350 per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Seller shall also be responsible for snow removal and/or landscape maintenance. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer.

In the event of possession by Seller after close, Buyer and Seller ☐ agree ☒ do not agree to sign the West Michigan Regional *Temporary Occupancy Addendum* to the Purchase Agreement. If signed, that Addendum shall become an integral part of this Agreement.

Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until 8:00 pm (time) on 8/23/24 (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$ 2000 shall be submitted to Nations Title (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Buyer is entitled to a refund of the Earnest Money Deposit. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.
25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.
26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.
27. **Other Provisions:**
1. Buyer(s) will increase offer to a net of \$2,000 more than any bona fide or good faith competing offer made for aforementioned property, in an amount not to exceed \$166,000. Buyer(s) must be provided with a copy of the competing offer together with a bank prequalification or pre-approval letter demonstrating, to Buyer(s) sole satisfaction, that the second buyer is qualified to purchase 1441 Hoyt St, Muskegon, MI 49442 at the price set forth in the competing offer.
 2. Seller to pay buyer's agency commission equal to 2.8% of total purchase price, see addendum
28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.
29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.

1441 Hoyt St, Muskegon, MI 49442

Subject Property Address/Description

Initial

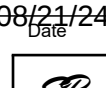
08/21/24

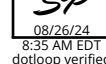
Date

5:00 pm

Time

 ☐ Buyer's Initials

 ☐ Seller's Initials


08/26/24
8:35 AM EDT
dotloop verified

30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' 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.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address _____ *Marcus Blanks* **Buyer**

Buyer 1 Phone: (Res.) _____ (Bus.) _____ **MARCUS BLANKS**

Print name as you want it to appear on documents.

Buyer 2 Address _____ **X** **Buyer**

Buyer 2 Phone: (Res.) _____ (Bus.) _____

Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☐ As written. ☒ As written except:

The seller will provide a quit claim deed VS a warranty deed. The buyer acknowledges they have signed and will abide by the city of Muskegon's addendum for the builder's warranty and landscaping requirements. The home must be owner occupied.

Counteroffer, if any, expires _____, at _____ (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated _____ (choose one): ☐ Yes ☐ No.

Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. **Listing Office Address:** _____ Listing Broker License # _____

Listing Agent Name: _____ Listing Agent License # _____

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time): *Sam Pulos* dotloop verified
08/26/24 8:35 AM EDT
3TKO-CZWN-MFGJ-U9FK

Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Print name as you want it to appear on documents.

X (Seller's Signature, Date, Time): _____

Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Print name as you want it to appear on documents.

Seller's Address: _____ Seller's Phone (Res.) _____ (Bus.) _____

* If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time): _____

X (Buyer's Signature, Date, Time): _____

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's offer.

X (Seller's Signature, Date, Time): *Sam Pulos* dotloop verified
08/26/24 8:35 AM EDT
FWNV-EJLY-AXG6-LF1L

X (Seller's Signature, Date, Time): _____

1441 Hoyt St, Muskegon, MI 49442

Subject Property Address/Description

08/21/24

Date

5:00 pm

Time

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Sale of 1441 Leahy															
Submitted by: Samantha Pulos, Code Coordinator	Department: Planning															
Brief Summary: Staff is requesting approval of a purchase agreement for 1441 Leahy for \$159,440.																
Detailed Summary & Background: 1441 Leahy was constructed through the agreement with Dave Dusendang to construct infill housing with ARPA funding. The offer is over full listing price with no seller concessions.																
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Key Focus Area: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business																
Amount Requested: n/a	Budgeted Item: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;"></td> <td style="width: 15%;">No</td> <td style="width: 15%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">x</td> <td style="width: 15%;"></td> </tr> </table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Fund(s) or Account(s): n/a	Budget Amendment Needed: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;"></td> <td style="width: 15%;">No</td> <td style="width: 15%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">x</td> <td style="width: 15%;"></td> </tr> </table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Recommended Motion: To approve the Purchase Agreement for 1441 Leahy for \$159,440 and authorize the Code Coordinator, Samantha Pulos, to sign.																
Approvals: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Immediate Division Head</td> <td style="width: 10%; text-align: center;">x</td> <td style="width: 20%;"></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td style="text-align: center;">x</td> <td></td> </tr> <tr> <td>Communication</td> <td></td> <td></td> </tr> <tr> <td>Legal Review</td> <td></td> <td></td> </tr> </table>	Immediate Division Head	x		Information Technology			Other Division Heads	x		Communication			Legal Review			Guest(s) Invited / Presenting: No
Immediate Division Head	x															
Information Technology																
Other Division Heads	x															
Communication																
Legal Review																



\$149,900

1441 Leahy St, Muskegon, MI 49442

0 beds 0 baths -- sqft

Contact agent

Est.: \$901/mo Get pre-qualified

Single Family Residence	Built in 2024	3,920 sqft lot
\$149,300 Zestimate®	\$--/sqft	\$-- HOA

What's special

Come see this quality built new home its ready to move into its close to highways and all the activities that Muskegon has to offer. This home must be owner occupied

21 days on Zillow | 320 views | 17 saves

Zillow last checked: 3 hours ago
Listing updated: August 27, 2024 at 01:20pm
Listed by: Brent T Cox 616-717-1220, West Urban Realty LLC 616-717-1220
Source: MichRIC, MLS#: 24044627

WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE: 08/25/2024 (time) _____ MLS # _____

SELLING OFFICE: Five Star Real Estate BROKER LIC.#: _____ REALTOR® PHONE: 2312153242

LISTING OFFICE: West Urban Realty LLC(g143200) REALTOR® PHONE: 616-717-1220

1. **Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, 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. Any reference to "time" refers to local time.
2. **Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the *Disclosure Regarding Real Estate Agency Relationships*. The selling licensee is acting as (choose one):
☐ Agent/Subagent of Seller ☒ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator
- Primary Selling Agent Name: Timothy Updyke Email: timupdykerealty@gmail.com Lic.#: 6501410013
- Alternate Selling Agent Name: _____ Email: _____ Lic.#: _____
3. **Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)
☒ Buyer has received the *Seller's Disclosure Statement*, dated 08/24/2024.
☐ Buyer has not received the *Seller's Disclosure Statement*. Buyer may terminate this Agreement, in writing, any time prior to receipt of the *Seller's Disclosure Statement*. Once Buyer has received the *Seller's Disclosure Statement*, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions: _____
☐ Seller is exempt from the requirements of the Seller Disclosure Act.
4. **Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.
5. **Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of Muskegon, County of Muskegon County, Michigan, commonly known as (insert mailing address: street/city/state/zip code) 1441 Leahy Street, Muskegon, MI 49442 with the following legal description and tax parcel ID numbers: CITY OF MUSKEGON REVISED PLAT OF 1903 N 34.12 FT LOT 14 BLK 274

PP# 61-24-205-274-0014-01

The following paragraph applies only if the Premises include unplatted land:
Seller agrees to grant Buyer at closing the right to make (insert number) _____ division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before _____ of the proposed division to create the Premises.

6. **Purchase Price:** Buyer offers to buy the Property for the sum of \$ 158,900 one hundred fifty-eight thousand nine hundred U.S. Dollars

7. **Seller Concessions**, if any: _____

8. **Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.

- ☐ CASH. The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.
- ☒ NEW MORTGAGE. The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a FHA/MSHDA type 30 (year) mortgage in the amount of 96.5 % of the Purchase Price bearing interest at a rate not to exceed 7 % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within 2 days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☐ Buyer will agree to pay an amount not to exceed \$ _____ representing repairs required as a condition of financing. Buyer ☐ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from _____

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$_____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$ _____ will be payable in monthly installments of \$ _____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$ _____) between the Purchase Price above provided and the unpaid balance (approximately \$ _____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ OTHER: _____

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

- ☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.
- ☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

Sellers to add central air and stainless kitchen appliance package (refrigerator, range, dishwasher & Microwave) as well as washer & Dryer
but does not include:

1441 Leahy Street, Muskegon, MI 49442
Subject Property Address/Description

08/25/2024
Date Time

11. Heating and Cooking Fuels: Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

12. Assessments (choose one):

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required for future connection to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. Property Taxes: Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

14. Well/Septic: Within ten (10) days after the Effective Date, (choose one) ☐ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other:

NA city water & Sewer

15. Inspections & Investigations:

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 10 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

1441 Leahy Street, Muskegon, MI 49442
Subject Property Address/Description

08/25/2024
Date

Time

accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions:

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions:

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☐ Buyer or ☐ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☒ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 09/23/2024. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee**. Exceptions:

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At _____ a.m. ☐ p.m. on the _____ day **after** completion of the closing of the sale, during which time Seller will have the privilege to occupy the Property and hereby agrees to pay Buyer \$_____ as an occupancy fee for this period payable at closing, WITHOUT PRORATION. Payment shall be made in the form of cash or certified funds.

1441 Leahy Street, Muskegon, MI 49442
Subject Property Address/Description

08/25/2024
Date

Time

For purposes of determining possession, the transaction will be considered closed once all necessary documents have been signed and received by escrow agent and funds have been received by the escrow agent.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ 200 per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Seller shall also be responsible for snow removal and/or landscape maintenance. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer.

In the event of possession by Seller after close, Buyer and Seller ☐ agree ☐ do not agree to sign the West Michigan Regional *Temporary Occupancy Addendum* to the Purchase Agreement. If signed, that Addendum shall become an integral part of this Agreement.

Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until 5pm (time) on 08/27/2024 (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$ 1000 upon offer acceptance shall be submitted to Five Star Real Estate (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Buyer is entitled to a refund of the Earnest Money Deposit. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.
25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.
26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.
27. **Other Provisions:**
- **The seller will provide a quit claim deed VS a warranty deed. The buyer acknowledges they have signed and will abide by the city of Muskegon's addendum for the builder's warranty and landscaping requirements. The home must be owner occupied.
- Seller to pay buyers agent 3% commission
- Buyers to pay \$345 buyer broker admin fee upon closing
28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.
29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.

1441 Leahy Street, Muskegon, MI 49442
Subject Property Address/Description

08/25/2024
Date

Time

30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' 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.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address: X McKenna Bowman dotloop verified 08/25/24 9:16 PM EDT 17XB-BD15-XRMJ-Q9GY **Buyer**
 Buyer 1 Phone: (Res.) _____ (Bus.) _____ McKenna Bowman
 Print name as you want it to appear on documents.

Buyer 2 Address: X Kevin Bowman dotloop verified 08/25/24 9:19 PM EDT 17XB-BD15-XRMJ-Q9GY **Buyer**
 Buyer 2 Phone: (Res.) _____ (Bus.) _____
 Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☐ As written. ☒ As written except:
 the sale price will be 159,440.00 one hundred and fifty-nine thousand four hundred and forty

Counteroffer, if any, expires _____, at _____ (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated _____ (choose one): ☐ Yes ☐ No.
 Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. **Listing Office Address:** _____ Listing Broker License # _____

Listing Agent Name: _____ Listing Agent License # _____

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time): Sam Pulos dotloop verified 08/27/24 4:01 PM EDT KCMC-BKSR-ZFRF-PVZC
 _____ Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*
 _____ Print name as you want it to appear on documents.

X (Seller's Signature, Date, Time): _____
 _____ Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*
 _____ Print name as you want it to appear on documents.

Seller's Address: _____ Seller's Phone (Res.) _____ (Bus.) _____
 * If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time): _____
X (Buyer's Signature, Date, Time): _____

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counteroffer.

X (Seller's Signature, Date, Time): Sam Pulos dotloop verified 08/27/24 4:01 PM EDT KQD-7BLU-MNYC-SFCE
X (Seller's Signature, Date, Time): _____

1441 Leahy Street, Muskegon, MI 49442
 Subject Property Address/Description

08/25/2024
 Date Time

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Amendment to the zoning ordinance - Cat Cafés in commercial zones							
Submitted by: Mike Franzak, Planning Director	Department: Planning							
Brief Summary: Staff-initiated request to amend the zoning ordinance to allow cat cafés as a special use permitted in all commercial districts excluding B-1. This would include the following zoning districts: B-2; B-4; FBC, DT; FBC, MS; FBC, NC; LFBC, LC; and LFBC, MR.								
Detailed Summary & Background: Staff has been receiving many calls regarding the desire to open a cat café in Muskegon. These types of businesses are becoming more popular throughout the state. A specific ordinance allowing these uses is necessary because any property housing more than four cats is considered a commercial kennel. The Planning Commission unanimously recommended approval of the ordinance amendment.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Recommended Motion: I move to amend the zoning ordinance to allow cat cafés as a special use permitted in the following zoning districts: B-2; B-4; FBC, DT; FBC, MS; FBC, NC; LFBC, LC; and LFBC, MR.								
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>X</td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr></table>	Immediate Division Head	X		Information Technology			Guest(s) Invited / Presenting: No	
Immediate Division Head	X							
Information Technology								

Other Division Heads			
Communication			
Legal Review			

Planning Commission Packet Excerpt

Hearing, Case 2024-25: Staff-initiated request to amend Article XX and Sections 1100 and 1300 to allow cat cafes as a special use permitted in Form-Based Code, Downtown; Form-Based Code, Mainstreet; Form Based Code, Neighborhood Core, Lakeside Form-Based Code, Lakeside Commercial, Lakeside Form-Based Code, Mixed Residential; B-2, Convenience & Comparison Business; and B-4, General Business districts.

SUMMARY

1. This amendment would allow cat cafes as a special use permitted in the following zoning districts: B-2; B-4; FBC, DT; FBC, MS; FBC, NC; LFBC, LC; and LFBC, MR.
2. Please follow this [link](#) to see cat cafes that are currently in operation throughout Michigan.
3. To operate a cat café, an applicant would have to apply for a special use permit and attend a public hearing. The proposed regulations for a cat café are listed below.

Proposed Special Use Permit Regulations:

Cat Cafes, under the following conditions:

1. Keeping of domestic animals shall be consistent with the provisions of Article XX, noise, and Article XX nuisances/littering of the City's Code of Ordinances.
2. Limited to cats (felines) only.
3. Capacity: The establishment must provide 62 square feet per one (1) cat and no more than 15 on-site at any one time.
4. The cats shall always be kept separate from food preparation areas.
5. The boarding of cats shall take place entirely indoors.
6. Any cats leaving the establishment must be in a carrier.
7. A sign indicating a 24-hour emergency phone number shall be kept current and posted on the site in a place clearly visible from the exterior.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Article XX and Sections 1100 and 1300 to allow cat cafes as a special use permitted in Form-Based Code, Downtown; Form-Based Code, Mainstreet; Form Based Code, Neighborhood Core, Lakeside Form-Based Code, Lakeside Commercial, Lakeside Form-Based Code, Mixed Residential; B-2, Convenience & Comparison Business; and B-4, General Business districts.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Article XX and Sections 1100 and 1300 is amended to permit cat cafes as a special use permitted in Form-Based Code, Downtown; Form-Based Code, Mainstreet; Form Based Code, Neighborhood Core, Lakeside Form-Based Code, Lakeside Commercial, Lakeside Form-Based Code, Mixed Residential; B-2, Convenience & Comparison Business; and B-4, General Business districts.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 24th day of September 2024, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2024.

Ann Meisch, MMC

Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on September 24, 2024, the City Commission of the City of Muskegon adopted an ordinance to allow cat cafes in certain commercial districts.

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

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

Published _____, 2024.

CITY OF MUSKEGON

By _____

Ann Meisch, MMC

City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Amendment to the zoning ordinance - Cat Cafe definition												
Submitted by: Mike Franzak, Planning Director	Department: Planning												
Brief Summary: To add a definition for cat cafés to Article II (Definitions) of the zoning ordinance.													
Detailed Summary & Background: Definition - Cat café: a restaurant or café, which also houses adoptable or therapeutic cats for clientele to interact with, and which may incorporate cat adoption services in addition to the restaurant services. The Planning Commission unanimously recommended approval of the ordinance amendment at their September 12 meeting.													
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business													
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X						
Yes		No		N/A	X								
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X						
Yes		No		N/A	X								
Recommended Motion: I move to approve the request to amend the zoning ordinance to add a definition for cat cafés.													
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>X</td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr><tr><td>Other Division Heads</td><td></td><td></td></tr><tr><td>Communication</td><td></td><td></td></tr></table>	Immediate Division Head	X		Information Technology			Other Division Heads			Communication			Guest(s) Invited / Presenting: No
Immediate Division Head	X												
Information Technology													
Other Division Heads													
Communication													

Legal Review			
--------------	--	--	--

Planning Commission Packet Excerpt

Hearing, Case 2024-24: Staff-initiated request to amend Article II (Definitions) of the zoning ordinance to create a definition for “cat café.”

SUMMARY

1. Staff has been receiving requests from potential business owners that would like to operate a “cat café” in Muskegon. A cat café is a theme café whose attraction is cats who can be watched and played with and are often up for adoption.
2. This use has recently become more popular over the past few years and several cat cafes have opened around the state.
3. The zoning ordinance defines “commercial kennel” as “any premises on which more than three dogs or more than four cats, older than four months old, are kept on any premises which offers cats or dogs for sale on a reoccurring basis.”
4. This new “cat café” definition would allow these types of businesses to operate, under certain regulations, without violating the commercial kennel zoning regulations.

Proposed Definition:

Cat café: a restaurant or cafe, which also houses adoptable or therapeutic cats for clientele to interact with, and which may incorporate cat adoption services in addition to the restaurant services.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Article II (Definitions) of the zoning ordinance to create a definition for “cat café.”

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

Article II (Definitions) of the zoning ordinance is hereby amended to create a definition for “cat café

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 24th day of September 2024, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2024.

Ann Meisch, MMC

Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on September 24, 2024, the City Commission of the City of Muskegon adopted an ordinance to create a zoning ordinance definition for cat café.

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

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

Published _____, 2024.

CITY OF MUSKEGON

By _____

Ann Meisch, MMC

City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Contract for Tree Removal Services							
Submitted by: Mike Franzak, Planning Director	Department: Planning							
Brief Summary: To award the tree removal services contract to Stright Up Tree Service, who was the lowest qualified bidder at \$35,365.78.								
Detailed Summary & Background: Staff is working with two developers to construct homes on 18 City-owned residential lots. The lots have several trees located within the potential building footprints, making it unfeasible for the developers to construct homes due to the costs associated with tree removal. A request for proposal for tree services was listed on the City's website. Staff recommends awarding the contract to Straight Up Tree Service, who was the lowest qualified bidder. Trees and stumps must be removed from the lots by October 20. The lots include 1284/1365/1375 James Ave, 209 Merrill Ave, 502/561 Mary St, 845/982 Ducey Ave, 1003/1341 Ducey Ave, 1007 Albert Ave, 1542 Adams Ave, 320/346 Wood St, 425 Octavious St, 436 Charles St, 877 Amity Ave, and 907 Orchard Ave.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: To be filled in Tuesday	Budgeted Item: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 10%;">X</td> <td style="width: 15%;">No</td> <td style="width: 10%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 10%;"></td> <td style="width: 10%;"></td> </tr> </table>	Yes	X	No		N/A		
Yes	X	No		N/A				
Fund(s) or Account(s): Public Improvement 445-901-5300	Budget Amendment Needed: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 10%;"></td> <td style="width: 15%;">No</td> <td style="width: 10%;"></td> <td style="width: 15%;">N/A</td> <td style="width: 10%;">X</td> <td style="width: 10%;"></td> </tr> </table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Recommended Motion: I move to award the tree removal contract to Straight Up Tree Service.								
Approvals: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Immediate Division Head</td> <td style="width: 10%; text-align: center;">X</td> <td style="width: 30%;"></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> </table>	Immediate Division Head	X		Information Technology			Guest(s) Invited / Presenting: No	
Immediate Division Head	X							
Information Technology								

Other Division Heads			
Communication			
Legal Review			

Company	City	Cost
Straight Up Tree Services	Maple City, MI	\$35,365.78
Wise Owl	Marne, MI	\$137,570
Atkin Tree Services	Fruitport, MI	\$99,000
Monarch Tree Services	Nunica, MI	\$74,100
Professional Stump Grinding, LLC	Weidman, MI	\$184,377.60
Chop	Grand Rapids, MI	\$54,564.62
Alpine Tree Services	Freemont, MI	\$82,950

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Nelson School LIHTC Redevelopment Municipal Services Agreement						
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development						
Brief Summary: General Capital is resubmitting their application for Low Income Housing Tax Credits in order to redevelop the Nelson School site into affordable family apartments. They require a Municipal Services Agreement to be approved by the City before the October 1, 2024 application date.							
Detailed Summary & Background: Pursuant to our 5 Year Housing Needs Assessments call for over 1,000 rental units priced under \$1,430 a month, staff has made overtures and established relationships with several new and existing LIHTC developers. General Capital has already successfully completed two new construction facilities in our community, and is seeking to complete a third with the Nelson School Apartments. This site will support 52 affordable family apartments. General Capital is seeking a Municipal Services Charge of 3% of net shelter rents. This should equal roughly \$15,000 per year for the city to keep to defray costs of public service delivery to the site							
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> Blight cleanup Diverse housing types Progress toward completion of ongoing economic development projects <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business							
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td></tr></table>	Yes		No		N/A	
Yes		No		N/A			
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td></tr></table>	Yes		No		N/A	
Yes		No		N/A			
Recommended Motion: Motion to accept the Municipal Services Agreement between the City of Muskegon and GenCap Nelson Limited Dividend Housing Association, LLC as presented and to authorize the mayor and clerk to sign.							

Approvals:

Immediate Division Head	☒	
Information Technology	☐	
Other Division Heads	☐	
Communication	☐	
Legal Review	☒	

Guest(s) Invited / Presenting:

Yes

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this ___ day of S e p t e m b e r 2 0 2 4 between GenCap Nelson Limited Dividend Housing Association, LLC, a Michigan limited liability company its successors and/or assigns (the “Sponsor”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Developer has assumed an agreement to purchase a site in the City of Muskegon known as Nelson School Apartments for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Developer acknowledges that such needs may be greater than typically situated residential developments.

D. The Developer desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Developer shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect (the “Municipal Service Fee”). The Municipal Service Fee shall be three (3%) percent of the net rent adjusted for vacancies received annually, excluding project paid utilities, starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City’s fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Developer shall submit, upon request, a copy of the annual audit of the Project prepared by an independent CPA’s along with the payment of the Municipal Service Fee.
5. **Exclusive Benefit.** The obligations of the Developer hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Developer agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Developer agrees to be liable for all costs of collection including reasonable attorney’s fees and costs incurred by the City in the enforcement of the terms of this Agreement, if Developer is found to be in default of this Agreement by a court of competent jurisdiction.
7. **Assignment.** Upon the written consent of the City, the Developer may transfer or assign its rights and obligations under this Agreement to a buyer (“Transferee”) of the Project. The Transferee must agree to assume the Developer’s obligations under this Agreement and the Development Agreement which has been executed by the Developer with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Developer shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Developer may assign this Agreement, without the written consent of the City, to an affiliate of Developer (provided that such affiliate agrees to assume the Developer’s obligations hereunder and provided that the Developer and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Developer).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Developer:

GenCap Nelson Limited Dividend Housing Association, LLC
David Weiss
6938 North Santa Monica Boulevard
Fox Point WI. 53217

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

Municipal Services
Agreement Signature Page

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

CITY:

CITY OF MUSKEGON

Dated: _____, 2023

By: _____
Ken Johnson, Mayor

Dated: _____, 2023

By: _____
Ann Meisch, City Clerk

DEVELOPER:

GenCap Nelson Limited Dividend Housing
Association, LLC

By: _____
Name: _____
Its: Authorized Signer

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Nelson School LIHTC Redevelopment Contract for Housing Exemption						
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development						
Brief Summary: General Capital is resubmitting their application to MSHDA for federal Low Income Housing Tax Credits to assist in the redevelopment of Nelson School into affordable family apartments. They are required to have an approved contract for housing exemption by the 10/1/2024 application date.							
Detailed Summary & Background: Pursuant to our 5 Year Housing Needs Assessments call for over 1,000 rental units priced under \$1,430 a month, staff has made overtures and established relationships with several new and existing LIHTC developers. General Capital has already successfully completed two new construction facilities in our community, and is seeking to complete a third with the Nelson School Apartments. This site will support 52 affordable family apartments. General Capital is seeking a Payment in lieu of Taxes (PILOT) of 4% of net shelter rents. This should equal roughly \$19,000 per year for the city to divide between taxing jurisdictions. General Capital is also requesting a 3% Municipal Services Charge, which is detailed in another agenda item in the packet.							
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Progress toward completion of ongoing economic development projects Blight cleanup Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business							
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td></tr></table>	Yes		No		N/A	☒
Yes		No		N/A	☒		
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td></tr></table>	Yes		No		N/A	☒
Yes		No		N/A	☒		
Recommended Motion: Motion to accept the Contract for Housing Exemption between the City of Muskegon and GenCap							

Nelson Limited Dividend Housing Association, LLC a Michigan LLC as presented and authorize the mayor and clerk to sign.

Approvals:

Immediate Division Head	☒	
Information Technology	☐	
Other Division Heads	☐	
Communication	☐	
Legal Review	☒	

Guest(s) Invited / Presenting:

Yes

CITY OF MUSKEGON

CONTRACT FOR HOUSING EXEMPTION

This Agreement between **GenCap Nelson Limited Dividend Housing Association, LLC**, a Michigan LLC whose address is 6938 North Santa Monica Boulevard, Fox Point, WI 53217 (the "Sponsor") and **CITY OF MUSKEGON**, whose address is 933 Terrace Street, Muskegon, Michigan (the "City") is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II "Taxation" of the City Code of Ordinances, providing for tax exemption (the "Ordinance") and providing for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.) (the "Act");

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low-income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of the Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Agreement are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

C. The City acknowledges that the Sponsor identified above has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan, to construct/acquire and rehabilitate, own and operate a proposed low-income housing project identified as Nelson School Apartments on certain property located in the City at 550 West Grand (the "Project") to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all ad valorem property taxes.

D. The Sponsor has entered into an agreement to form a limited dividend housing association LLC to function as owner of the proposed low-income housing Project. The owning entity is GenCap Nelson Limited Dividend Housing Association, LLC.

E. The City desires to encourage construction and financing of the low-income housing Project which is identified by the working name of Nelson School Apartments.

F. To further enable and encourage the construction of the housing Project, the Sponsor and the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1. "Authority" means the Michigan State Housing Development Authority.

1.2. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

1.3. "Contract Rents" means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities.

1.4. "Low Income Persons and Families" means persons and families eligible to move into a housing project.

1.5. "LIHTC" means the low-income housing tax credit administered by the Authority under Section 42 of the Internal Revenue Code, as amended.

1.6. "Mortgage Loan" means a loan that is Federally-Aided Mortgage (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. "Net Shelter Rent" means all collected rents on the subject project property accounting for point-in-time vacancies.

1.8. "Sponsor" means GenCap Nelson Limited Dividend Housing Association, LLC and any entity that receives or assumes a Mortgage Loan.

1.9. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

1.10. "Low Income Persons and Families" means persons and families eligible to move into a housing project utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the "Act"), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible Low-Income Persons and Families as defined above.

3. Term of Exemption. This exemption shall begin on the tax day of the year in which a final certificate of compliance or occupancy is issued by the City, and shall continue for the period the housing project

remains subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Code of 1986, as amended (the "IRS Code"), or a Mortgage Loan remains outstanding, not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is subject to the income and rent restrictions under Section 42 of the IRS Code or is subject to a Mortgage Loan, provided that the said Mortgage Loan continues outstanding as more particularly set forth in Section 82-50 of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Sponsor. The Sponsor agrees to perform the following:

4.1 The Sponsor shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1 of each year, beginning in the first year following the year in which the exemption is first effective, and continuing throughout the time the exemption is in effect. The service charge shall equal four percent (4%) of the ~~N~~et ~~S~~shelter ~~R~~ents charged for all the LIHTC certified units in the exempt housing project for the preceding calendar year, exclusive of the utility charges paid by the project.

4.2 The Sponsor agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low-income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31 of each year, as required by Section 82-55 of the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, or within 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that it has reviewed the Sponsor's proposal for the construction or rehabilitation of the Project, and that receipt of a Mortgage Loan from the Authority or an allocation of low-income housing tax credits by the Authority will satisfy the eligibility requirements of Section 82-50 of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

7. Payment of Service Charge. The annual service charge in lieu of taxes as established by this Agreement shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before July 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 4.1, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families as defined in Section 1.10 shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing

project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

12. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

13. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

CITY OF MUSKEGON

By: _____ Ken Johnson
Its: Mayor
Dated: _____

By: _____ Ann Meisch
Its: City Clerk
Dated: _____

**GenCap Nelson Limited Dividend Housing
Association, LLC a Michigan LLC**

By:____
Print:
Its:
Dated: _____

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1

That part of Block 373,409 and 410, portions of vacated Monroe Avenue, Washington Avenue, Johnson Street and an alley in Block 409, all in Revised Plat of 1903, City of Muskegon, Muskegon County, Michigan, described as: Beginning at a point on the East line of said Block 409 being 110.00 feet North of the Southeast corner of said Block 409; thence North 02 degrees 10 minutes 29 seconds East, 367.06 feet along said East line; thence South 76 degrees 22 minutes 19 seconds West, 768.54 feet; thence Southeasterly, 346.83 feet along the arc of a 1719.97 foot radius curve to the right, the long chord of which bears South 36 degrees 46 minutes 53 seconds East, 346.24 feet to the North right of way line of Grand Street, a 66 foot wide public roadway; thence South 87 degrees 59 minutes 19 seconds East, 371.27 feet along said North right of way line; thence North 01 degrees 06 minutes 34 seconds East, 109.67 feet (platted as 110.00 feet); thence South 87 degrees 59 minutes 19 seconds East, 152.26 feet (platted as 150.00 feet) to the East line of 8th Avenue and the Point of Beginning. Containing 5.23 acres of land, Subject to restrictions, easements and rights of way of record.

MJ DMS 31007846v10

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Clay Commons Municipal Services Agreement						
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development						
Brief Summary: Spire Development is proposing a new construction affordable family apartment development called Clay Commons at 30 East Clay. In order to submit their Low Income Housing Tax Credit application to MSHDA they will require a Municipal Services Agreement approved by the city prior to the October 1, 2024 application date.							
Detailed Summary & Background: Spire Development was successfully awarded two LIHTC projects by MSHDA in our community in the 2023 round, and are now proposing two more projects. Staff is recommending a 3% Municipal Services Charge in the attached agreement in order to defray the costs of public service delivery to the site. This payment should provide roughly \$9,000-11,000 annually.							
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business							
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td></tr></table>	Yes		No		N/A	☒
Yes		No		N/A	☒		
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td></tr></table>	Yes		No		N/A	☒
Yes		No		N/A	☒		
Recommended Motion: Motion to accept the Municipal Services Agreement between the City of Muskegon and Clay Commons Limited Dividend Housing Association Limited Partnership as presented and to authorize the mayor and clerk to sign.							
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>☒</td></tr></table>	Immediate Division Head	☒	Guest(s) Invited / Presenting: Yes				
Immediate Division Head	☒						

Information Technology			
Other Division Heads			
Communication			
Legal Review			

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this ___ day of S e p t e m b e r , 2 0 2 4 between **CLAY COMMONS LIMITED DIVIDENT HOUSING ASSOCIATION LIMITED PARTNERSHIP, a Michigan limited partnership** its successors and/or assigns (the “Sponsor”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Sponsor has assumed an agreement to purchase a site in the City of Muskegon known as 30 E Clay Avenue for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Sponsor acknowledges that such needs may be greater than typically situated residential developments.

D. The Sponsor desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Sponsor shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect (the “Municipal Service Fee”). The Municipal Service Fee shall be three (3%) percent of the net rent, which includes reductions for vacancies and collection losses, received annually, reduced by project paid utilities, starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City’s fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Sponsor shall submit, upon request, a copy of the annual audit of the Project prepared by an independent CPA’s along with the payment of the Municipal Service Fee.
5. **Exclusive Benefit.** The obligations of the Sponsor hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Sponsor agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Sponsor agrees to be liable for all costs of collection including reasonable attorney’s fees and costs incurred by the City in the enforcement of the terms of this Agreement, if Sponsor is found to be in default of this Agreement by a court of competent jurisdiction.
7. **Assignment.** Upon the written consent of the City, the Sponsor may transfer or assign its rights and obligations under this Agreement to a buyer (“Transferee”) of the Project. The Transferee must agree to assume the Sponsor’s obligations under this Agreement and the Development Agreement which has been executed by the Sponsor with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Sponsor shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Sponsor may assign this Agreement, without the written consent of the City, to an affiliate of Sponsor (provided that such affiliate agrees to assume the Sponsor’s obligations hereunder and provided that the Sponsor and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Sponsor).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Sponsor:

Attn: Thomas A. Grywalski
Clay Commons Limited Dividend Housing Association Limited Partnership
330 West Spring Street, Suite 430
Columbus, Ohio 43215

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

CITY:

CITY OF MUSKEGON

Dated: _____, 2023

By: _____
Ken Johnson, Mayor

Dated: _____, 2023

By: _____
Ann Meisch, City Clerk

SPONSOR:

**CLAY COMMONS LIMITED DIVIDEND HOUSING
ASSOCIATION LIMITED PARTNERSHIP,**
a Michigan limited partnership

By: Clay Commons GP, LLC
Its: Managing Member

By: Spire Real Estate Holdings, LLC,
Its: Managing Member

By: _____
Name: _____
Its: Authorized Signer

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Clay Commons Contract for Housing Exemption							
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development							
Brief Summary: Spire Development is seeking approval from MSHDA to receive Low Income Housing Tax Credits to facilitate the construction of a new family apartment complex at 30 E. Clay. They require an approved Contract for Housing Exemption by the City before the 10/1/2024 application date.								
Detailed Summary & Background: Spire has successfully been awarded two LIHTC allocations on their 2023 project submissions in our community, and are now submitting two more to MSHDA in 2024. Notably, they are proposing new construction of affordable family housing in the downtown area, directly across the street from United Way at 30 E. Clay Street. They are requesting a 4% annual PILOT payment, which is one point lower than the PILOT policy recommends. Their reasoning for this request is the significant contamination they have found on the site during due diligence and the additional costs it will place on the project. Staff recommends approval, as tools like Brownfield TIF that a market rate developer may utilize for this issue are not available to LIHTC development due to the lack of ad valorem property tax payments.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td><td></td></tr></table>	Yes		No		N/A		
Yes		No		N/A				
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td> </td><td></td></tr></table>	Yes		No		N/A		
Yes		No		N/A				
Recommended Motion: Motion to accept the Contract for Housing Exemption between the City of Muskegon and CLAY COMMONS LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP as presented and authorize the mayor and clerk to sign.								

Approvals:

Immediate Division Head	☒	
Information Technology	☐	
Other Division Heads	☐	
Communication	☐	
Legal Review	☒	

Guest(s) Invited / Presenting:

Yes

CITY OF MUSKEGON

CONTRACT FOR HOUSING TAX EXEMPTION

This Agreement between **CLAY COMMONS LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP**, a Michigan limited partnership, whose address is 330 West Spring Street, Suite 430, Columbus, Ohio 43215 (the "Sponsor") and **CITY OF MUSKEGON**, whose address is 933 Terrace Street, Muskegon, Michigan (the "City") is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II "Taxation" of the City Code of Ordinances, providing for tax exemption (the "Ordinance") and providing for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.) (the "Act");

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for ~~low-income~~ persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of the Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Agreement are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

C. The City acknowledges that the Sponsor (as identified above) has offered, subject to receipt of an allocation of Low Income Housing Tax Credits by the Michigan State Housing Development Authority, to construct/acquire, own and operate a proposed low-income housing project identified as Clay Commons on certain property located in the City at 30 E Clay Avenue (the "Project") to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all ad valorem property taxes.

D. The Sponsor, or an affiliate of the Sponsor to be formed, has entered or will enter into an agreement to form a limited dividend housing association limited partnership or limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as **CLAY COMMONS LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP**.

E. The City desires to encourage construction and financing of the low-income housing Project which is identified by the working name of Clay Commons

F. To further enable and encourage the construction of the housing Project, the Sponsor and the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1. "Authority" means the Michigan State Housing Development Authority.

1.2. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, ~~exclusive of reduced by~~ Utilities.

1.3. "Contract Rents" means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, ~~exclusive of reduced by~~ Utilities.

1.4. "Low Income Persons and Families" means persons and families eligible to move into a housing project governed by Section 42 of the Internal Revenue Code, as amended, utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.

1.5. "LIHTC Program" means the ~~low-Low income-Income housing-Housing tax-Tax credit-Credit program~~ administered by the Authority under Section 42 of the Internal Revenue Code, as amended.

1.6. "Mortgage Loan" means a loan that is Federally-Aided ~~Mortgage~~ (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction, acquisition and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. "Net Shelter Rents" means ~~all collected rents on the subject project property accounting for point in time vacancies~~ Annual Shelter Rent.

1.8. "Sponsor" means CLAY COMMONS LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP, and any entity that receives or assumes a Mortgage Loan.

1.9. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

~~1.10. "Low Income Persons and Families" means persons and families eligible to move into a housing project utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.~~

2. Class of Housing Projects. It is determined that the class of housing projects to which the

tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing projects for Low Income Persons and Families that are financed with a Mortgage Loan or the LIHTC Program. It is further determined that Clay Commons is of this class.

2.3. Establishment of Annual Service Charge~~Grant of Exemption~~. As contemplated and pursuant to the Act ~~346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the "Act")~~, the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible Low-Income Persons and Families as defined above. Housing projects within the eligible class set forth in Section 2 above and the property on which they are or will be located shall be exempt from all ad valorem property taxes from and after the commencement of construction or rehabilitation. The City acknowledges that the Sponsor and the Authority, in the case of a Sponsor receiving an Authority-financed Mortgage Loan, or the Sponsor and the mortgage lender, in the case of a Sponsor receiving a Federally aided Mortgage Loan, have established the economic feasibility of the housing projects for exemption from all ad valorem property taxes and a payment in lieu of taxes as established in this Ordinance. Therefore, the City will accept payment of an annual service charge for the public services in lieu of all ad valorem property taxes. The annual service charge shall be equal to 4% of the Net Shelter Rents actually collected by the housing project during each operating year.

3.4. Term of Exemption. This exemption shall begin from and after the commencement of construction or rehabilitation~~on the tax day of the year in which a final certificate of compliance or occupancy is issued by the City~~, and shall continue for the period the housing project remains subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Code of 1986, as amended (the "IRS Code"), or a Mortgage Loan remains outstanding, not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is subject to the income and rent restrictions under Section 42 of the IRS Code or is subject to a Mortgage Loan, provided that the said Mortgage Loan continues outstanding as more particularly set forth in Section 82-50 of the Ordinance, not to exceed 25 years.

4.5. Responsibilities of the Sponsor. The Sponsor agrees to perform the following:

4.15.1 The Sponsor shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1 of each year, beginning in the first year following the year in which the exemption is first effective, and continuing throughout the time the exemption is in effect. The service charge shall equal four percent (4%) of the ~~net-Net shelter~~ Shelter rents ~~Rents~~ charged for all the LIHTC certified units in the exempt housing project for the preceding calendar year, ~~exclusive of the utility charges paid by the project.~~

4.25.2 The Sponsor agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low-income housing tax credit program.

4.35.3 In lieu of the requirement to submit a statement of annual shelter rents ~~and/or~~ contract rents within 30 days after December 31 of each year, as required by Section 82-55 of the Ordinance, ~~Developer-Sponsor~~ shall submit an annual audit by April 1st. If not timely filed, or within 30 days after notice to ~~Developer-Sponsor~~ of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5.6. Interpretation of Financing. The City agrees that it has reviewed the Sponsor's proposal for the construction or rehabilitation of the Project, and that receipt of a Mortgage Loan from the Authority or an allocation of low-income housing tax credits by the Authority will satisfy the eligibility requirements of Section 82-50 of the Ordinance.

6.7. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

7.8. Payment of Service Charge. The annual service charge in lieu of taxes as established by this Agreement shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before July 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

8.9. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 4.1, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families as defined in Section 1.404 shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9.10. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10.11. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11.12. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

12.13. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

13.14. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

CITY OF MUSKEGON

By: _____ Ken Johnson
Its: Mayor
Dated: _____

By: _____ Ann Meisch
Its: City Clerk
Dated: _____

**CLAY COMMONS LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED
PARTNERSHIP.**

a Michigan limited partnership

By: Clay Commons GP, LLC,
Its: General Partner

By: Spire Real Estate Holdings, LLC,
Its: Managing Member

By: _____
Print Name: _____
Its: Authorized Member
Dated: _____

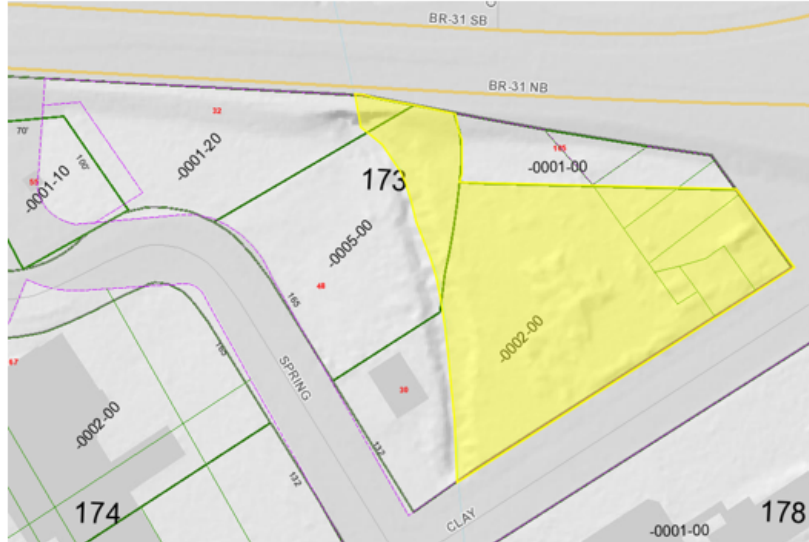
EXHIBIT A

LEGAL DESCRIPTION

Project Location: 30 E Clay Avenue, Muskegon, MI 49442

1.27 +/- acres

PIDN: 61-24-205-173-0002-00; 61-24-205-173-0005-00; 61-24-205-554-0001-20



WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Spring Street Crossing Municipal Services Agreement						
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development						
Brief Summary: Spire Development is proposing a new construction affordable family apartment complex at 48 East Western Avenue and is applying to MSHDA for Low Income Housing Tax Credits. They require a Municipal Services Agreement approved by the City prior to the 10/1/2024 application date.							
Detailed Summary & Background: Spire Development was successfully awarded two LIHTC projects by MSHDA in our community in the 2023 round, and are now proposing two more projects. Staff is recommending a 3% Municipal Services Charge in the attached agreement in order to defray the costs of public service delivery to the site. This payment should provide roughly \$9,000-11,000 annually.							
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> Diverse housing types <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business							
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td></tr></table>	Yes		No		N/A	☒
Yes		No		N/A	☒		
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td></tr></table>	Yes		No		N/A	☒
Yes		No		N/A	☒		
Recommended Motion: Motion to accept the Municipal Services Agreement between the City of Muskegon and SPRING STREET CROSSING LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP as presented and authorize the mayor and clerk to sign.							
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>☒</td><td></td></tr><tr><td>Information</td><td>☐</td><td></td></tr></table>	Immediate Division Head	☒		Information	☐		Guest(s) Invited / Presenting: Yes
Immediate Division Head	☒						
Information	☐						

Technology			
Other Division Heads			
Communication			
Legal Review			

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this ___ day of S e p t e m b e r , 2 0 2 4 between **SPRING STREET CROSSING LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP, a Michigan limited partnership** its successors and/or assigns (the “Sponsor”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Sponsor has assumed an agreement to purchase a site in the City of Muskegon known as 48 E. Western Avenue for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Sponsor acknowledges that such needs may be greater than typically situated residential developments.

D. The Sponsor desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Sponsor shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect (the “Municipal Service Fee”). The Municipal Service Fee shall be three (3%) percent of the net rent, which includes reductions for vacancies and collection losses, received annually, reduced by project paid utilities, starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City’s fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Sponsor shall submit, upon request, a copy of the annual audit of the Project prepared by an independent CPA’s along with the payment of the Municipal Service Fee.
5. **Exclusive Benefit.** The obligations of the Sponsor hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Sponsor agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Sponsor agrees to be liable for all costs of collection including reasonable attorney’s fees and costs incurred by the City in the enforcement of the terms of this Agreement, if Sponsor is found to be in default of this Agreement by a court of competent jurisdiction.
7. **Assignment.** Upon the written consent of the City, the Sponsor may transfer or assign its rights and obligations under this Agreement to a buyer (“Transferee”) of the Project. The Transferee must agree to assume the Sponsor’s obligations under this Agreement and the Development Agreement which has been executed by the Sponsor with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Sponsor shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Sponsor may assign this Agreement, without the written consent of the City, to an affiliate of Sponsor (provided that such affiliate agrees to assume the Sponsor’s obligations hereunder and provided that the Sponsor and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Sponsor).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Sponsor:

Attn: Thomas A. Grywalski
Clay Commons Limited Dividend Housing Association Limited Partnership
330 West Spring Street, Suite 430
Columbus, Ohio 43215

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

CITY:

CITY OF MUSKEGON

Dated: _____, 2023

By: _____
Ken Johnson, Mayor

Dated: _____, 2023

By: _____
Ann Meisch, City Clerk

SPONSOR:

**SPRING STREET CROSSING LIMITED DIVIDEND
HOUSING ASSOCIATION LIMITED PARTNERSHIP** a
Michigan limited partnership

By: Spring Street Crossing GP, LLC
Its: Managing Member

By: Spire Real Estate Holdings, LLC,
Its: Managing Member

By: _____
Name: _____
Its: Authorized Signer

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Spring Street Crossing Contract for Housing Exemption							
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development							
Brief Summary: Spire Development is seeking Low Income Housing Tax Credits from MSHDA to facilitate the new construction of an affordable family apartment complex at 48 E. Western Avenue. They require a contract for housing exemption approved by the city before the 10/1/2024 application date.								
Detailed Summary & Background: Spire has successfully been awarded two LIHTC allocations on their 2023 project submissions in our community, and are now submitting two more to MSHDA in 2024. Notably, they are proposing new construction of affordable family housing in the downtown area, directly across the street from Witt Buick at 48 E. Western Avenue. They are requesting a 4% annual PILOT payment, which is one point lower than the PILOT policy recommends. Their reasoning for this request is the significant contamination they have found on the site during due diligence and the additional costs it will place on the project. Staff recommends approval, as tools like Brownfield TIF that a market rate developer may utilize for this issue are not available to LIHTC development due to the lack of ad valorem property tax payments.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Recommended Motion: Motion to approve the Contract for Housing Exemption between the City of Muskegon and SPRING STREET CROSSING LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP as presented and authorize the mayor and clerk to sign.								

Approvals:

Immediate Division Head	☒	
Information Technology	☐	
Other Division Heads	☐	
Communication	☐	
Legal Review	☒	

Guest(s) Invited / Presenting:

Yes

CITY OF MUSKEGON

CONTRACT FOR HOUSING TAX EXEMPTION

This Agreement between **SPRING STREET CROSSING LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP**, a Michigan limited partnership, whose address is 330 West Spring Street, Suite 430, Columbus, Ohio 43215 (the "Sponsor") and **CITY OF MUSKEGON**, whose address is 933 Terrace Street, Muskegon, Michigan (the "City") is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II "Taxation" of the City Code of Ordinances, providing for tax exemption (the "Ordinance") and providing for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.) (the "Act");

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of the Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Agreement are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

C. The City acknowledges that the Sponsor (as identified above) has offered, subject to receipt of an allocation of Low Income Housing Tax Credits by the Michigan State Housing Development Authority, to construct/acquire, own and operate a proposed low-income housing project identified as Spring Street Crossing on certain property located in the City at 48 E. Western Avenue (the "Project") to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes.

D. The Sponsor, or an affiliate of the Sponsor to be formed, has entered or will enter into an agreement to form a limited dividend housing association limited partnership or limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as **SPRING STREET CROSSING LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP**.

E. The City desires to encourage construction and financing of the low-income housing Project which is identified by the working name of Spring Street Crossing.

F. To further enable and encourage the construction of the housing Project, the Sponsor and

the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1. "Authority" means the Michigan State Housing Development Authority.

1.2. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, reduced by Utilities.

1.3. "Contract Rents" means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, reduced by Utilities.

1.4. "Low Income Persons and Families" means persons and families eligible to move into a housing project governed by Section 42 of the Internal Revenue Code, as amended, utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.

1.5. "LIHTC Program" means the Low Income Housing Tax Credit program administered by the Authority under Section 42 of the Internal Revenue Code, as amended.

1.6. "Mortgage Loan" means a loan that is Federally-Aided (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction, acquisition and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. "Net Shelter Rents" means Annual Shelter Rent.

1.8. "Sponsor" means SPRING STREET CROSSING LIMITED DIVIDEND HOUSING ASSOCIATION LIMITED PARTNERSHIP, and any entity that receives or assumes a Mortgage Loan.

1.9. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

2. Class of Housing Projects. It is determined that the class of housing projects to which the tax exemption shall apply and for which a service charge shall be paid in lieu of such taxes shall be housing projects for Low Income Persons and Families that are financed with a Mortgage Loan or the LIHTC Program. It is further determined that Spring Street Crossing is of this class.

3. Establishment of Annual Service Charge. As contemplated and pursuant to the Act, the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which

consist of rental units offered to eligible Low-Income Persons and Families as defined above. Housing projects within the eligible class set forth in Section 2 above and the property on which they are or will be located shall be exempt from all ad valorem property taxes from and after the commencement of construction or rehabilitation. The City acknowledges that the Sponsor and the Authority, in the case of a Sponsor receiving an Authority-financed Mortgage Loan, or the Sponsor and the mortgage lender, in the case of a Sponsor receiving a Federally aided Mortgage Loan, have established the economic feasibility of the housing projects for exemption from all ad valorem property taxes and a payment in lieu of taxes as established in this Ordinance. Therefore, the City will accept payment of an annual service charge for the public services in lieu of all ad valorem property taxes. The annual service charge shall be equal to 4% of the Net Shelter Rents actually collected by the housing project during each operating year.

4. Term of Exemption. This exemption shall begin from and after the commencement of construction or rehabilitation, and shall continue for the period the housing project remains subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Code of 1986, as amended (the "IRS Code"), or a Mortgage Loan remains outstanding, not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is subject to the income and rent restrictions under Section 42 of the IRS Code or is subject to a Mortgage Loan, provided that the said Mortgage Loan continues outstanding as more particularly set forth in Section 82-50 of the Ordinance, not to exceed 25 years.

5. Responsibilities of the Sponsor. The Sponsor agrees to perform the following:

5.1 The Sponsor shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1 of each year, beginning in the first year following the year in which the exemption is first effective, and continuing throughout the time the exemption is in effect. The service charge shall equal four percent (4%) of the Net Shelter Rents charged for all the LIHTC certified units in the exempt housing project for the preceding calendar year.

5.2 The Sponsor agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low-income housing tax credit program.

5.3 In lieu of the requirement to submit a statement of annual shelter rents or contract rents within 30 days after December 31 of each year, as required by Section 82-55 of the Ordinance, Sponsor shall submit an annual audit by April 1st. If not timely filed, or within 30 days after notice to Sponsor of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

6. Interpretation of Financing. The City agrees that it has reviewed the Sponsor's proposal for the construction or rehabilitation of the Project, and that receipt of a Mortgage Loan from the Authority or an allocation of low-income housing tax credits by the Authority will satisfy the eligibility requirements of Section 82-50 of the Ordinance.

7. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

8. Payment of Service Charge. The annual service charge in lieu of taxes as established by this Agreement shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before July 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

9. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 4.1, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families as defined in Section 1.4 shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

10. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

11. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

12. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

13. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

14. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

CITY OF MUSKEGON

By: _____ Ken Johnson
Its: Mayor
Dated: _____

By: _____ Ann Meisch
Its: City Clerk
Dated: _____

**SPRING STREET CROSSING LIMITED
DIVIDEND HOUSING ASSOCIATION LIMITED
PARTNERSHIP.**

a Michigan limited partnership

By: Spring Street Crossing GP, LLC,
Its: General Partner

By: Spire Real Estate Holdings, LLC,
Its: Managing Member

By: _____
Print Name: _____
Its: Authorized Member
Dated: _____

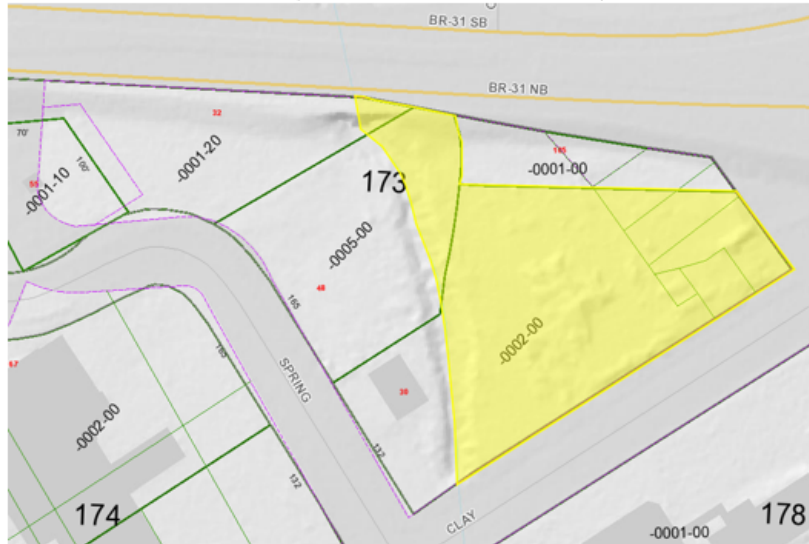
EXHIBIT A

LEGAL DESCRIPTION

Project Location: 30 E Clay Avenue, Muskegon, MI 49442

1.27 +/- acres

PIDN: 61-24-205-173-0002-00; 61-24-205-173-0005-00; 61-24-205-554-0001-20



WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Sale of 32 W. Western Avenue to Spire Development							
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development							
Brief Summary: Spire Development has requested to purchase vacant city-owned property immediately adjacent to the property is has under contract for Spring Street Crossing for a price of \$190,800.								
Detailed Summary & Background: Spire is proposing a new construction affordable family apartment complex at 48 E. Western Avenue called Spring Street Crossing. They have requested to add this .53 acre parcel to the project in order to ensure they have sufficient space for adequate parking, landscaping, and zoning compliance. The price per acre is the same as their purchase rate for the adjacent private sector properties. The revenues generated are proposed to be attributed to our upcoming Housing Fund in this year's budget, in order to be leveraged for further housing investments in the community.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Increase revenue Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: \$190,800 in revenue	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td>☒</td><td>N/A</td><td></td><td></td></tr></table>	Yes		No	☒	N/A		
Yes		No	☒	N/A				
Fund(s) or Account(s): Housing Fund (No Fund Number Yet)	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td>☒</td><td>No</td><td></td><td>N/A</td><td></td><td></td></tr></table>	Yes	☒	No		N/A		
Yes	☒	No		N/A				
Recommended Motion: Motion to accept the purchase agreement for 32 E. Western Avenue as presented and authorize the mayor and clerk to sign.								
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>☒</td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr></table>	Immediate Division Head	☒		Information Technology			Guest(s) Invited / Presenting: Yes	
Immediate Division Head	☒							
Information Technology								

Other Division Heads			
Communication			
Legal Review			

CONTRACT FOR PURCHASE OF REAL ESTATE

Spire Development, Inc. (the “Purchaser”), with an address of 330 West Spring Street, Suite 430, Columbus, Ohio 43215, hereby agrees to purchase from **City of Muskegon** (the “Seller”), with a mailing address of **933 Terrace St, Muskegon, Michigan 49443**, that certain real estate owned by Seller, located generally near **32 W Western Avenue, Muskegon, MI 49440** and identified as a portion of Parcel/Tax ID number(s) **61-24-205-554-0001-20** consisting of **0.53 +/-** acres and generally described and/or depicted on EXHIBIT A attached hereto and incorporated herein, together with all buildings, improvements, and tangible personal property located thereon, all rights, privileges and appurtenances thereto, and Seller’s interest in and to any and all leases and rents (collectively referred to as the “Real Estate”) subject to and upon the following terms and conditions (the “Contract”):

1. Purchase Price. The purchase price (the “Purchase Price”) for the Real Estate, subject to all adjustments and credits hereinafter provided, shall be **\$190,800**. The Purchase Price, less all Earnest Money (as hereinafter defined), shall be paid by wire transfer of readily available funds at Closing.

2. Earnest Money Deposit. Within ten (10) business days after date that this Contract is executed by both Purchaser and Seller (the “Acceptance Date”), Purchaser shall deposit with Star Title Agency LLC (the “Title Company”), **\$2,000** as an earnest money deposit (the “Earnest Money”). All Earnest Money shall at all times be applicable to the purchase price for the duration of this Contract. The Earnest Money shall be refundable to the Purchaser throughout the Inspection Period, at any time if Seller breaches or defaults hereunder or as otherwise set forth in this Contract.

3. Closing Date. Subject to all other terms and conditions set forth in this Contract, the transaction shall schedule to close in the office of the Title Company or such other place as the parties may mutually agree upon in writing, on or before the forty fifth (45th) day after the expiration of the Inspection Period. The exact date of closing (the “Closing Date”) shall be determined by a written notice from Purchaser to Seller at least seven (7) days prior to the closing.

4. Closing Documents. At Closing, Seller shall deliver: (a) a fully executed Quitclaim Deed conveying to Purchaser marketable fee simple title to the Real Estate free of any and all liens, encumbrances, easements, restrictions, covenants or other title defects that unreasonably interfere with the Intended Use (as defined below), except the lien of non-delinquent Real Estate taxes, and other matters, if any, disclosed in the Title Commitment (as hereinafter defined) and approved by Purchaser as provided in Section 8.2; (b) a Seller’s Affidavit in form and substance satisfactory to Purchaser and the Title Company; (c) a non-foreign person affidavit in form and substance satisfactory to Purchaser and the Title Company; and (d) all other documents and/or funds, if any, required by Purchaser.

5. Date of Possession. Possession of the Real Estate shall be delivered to Purchaser on the Closing Date, free and clear of all rights and claims of any other party to the ownership of the Real Estate.

6. Taxes and Assessment; Closing Costs. Purchaser assumes and agrees to pay all assessments for governmental and private improvements becoming a lien after the Closing Date and its pro rata portion of the real estate taxes assessed for the calendar year in which closing occurs (based upon the number of days remaining in such calendar year after the Closing Date). Seller shall pay all assessments for governmental and private improvements not assumed by Purchaser and both installments of real estate taxes payable during the prior calendar year which remain unpaid and its pro rata portion of the real estate taxes assessed for the calendar year in which closing occurs (based upon the number of days in such calendar year prior to and including the Closing Date). . Purchaser will pay the premium for the Title Policy in the amount of the Purchase Price and any fees in connection with preparation of the sale documents. Seller to pay for the Deed preparation. Purchaser will pay all costs associated with recording the Deed and

financing documents (if any). The Earnest Money shall be credited against the Purchase Price at closing. Purchaser and Seller shall each pay their own attorney fees related to the closing of the transaction.

7. Intended Use. Purchaser's intended use of the Real Estate shall be a multi-family rental housing development, or as determined by Purchaser in its sole and reasonable discretion (the "Intended Use").

8. Conditions of Performance. Purchaser's obligations under this Contract are subject to the timely and complete satisfaction, in Purchaser's sole discretion, of the following conditions, unless waived in writing by Purchaser:

8.1 Survey. Purchaser, at its cost and expense, shall order a current survey of the Real Estate (the "Survey"), by a registered land surveyor designated by Purchaser. Seller shall provide to Purchaser, to the extent that they are in Seller's possession, any surveys and reports on the physical and environmental aspects of the Real Estate. The Survey shall be in form and substance acceptable to Purchaser in its sole discretion.

8.2 Title Insurance. Purchaser, at its cost and expense shall procure (a) a title insurance commitment for the Real Estate issued by the Title Company, in which commitment the Title Company shall agree to (i) insure for the full amount of the Purchase Price marketable fee simple title to the Real Estate in the name of Purchaser, free of all exceptions unless (including, without limitation, the standard exceptions), except only the lien of non-delinquent real estate taxes and assessments and such other matters that Purchaser may approve as hereinafter provided, and (ii) issue such endorsements as Purchaser may reasonably request (the "Title Commitment"); and (b) copies of all documents and matters disclosed or referred to in the Title Commitment (the "Title Documents"). If any exception in the Title Commitment is unacceptable to Purchaser, Purchaser shall notify Seller in writing and Seller shall then have 30 days to cure such unacceptable exception. If Seller fails to cure such exception with such 30-day period and provide evidence to Purchaser of such cure, then Purchaser shall have the right but not the obligation to terminate this Contract by written notice to the Seller and the Earnest Deposits shall be returned to Purchaser. Purchaser, at its cost and expense, shall obtain an owner's policy of title insurance issued by the Title Company, in the full amount of the Purchase Price and in conformity with the marked Title Commitment. Purchaser shall pay the cost of any mortgage title insurance.

8.3 Condition of Real Estate/Inspection Period. Purchaser, at its sole cost and expense shall have an inspection period, which shall commence upon the Acceptance Date of this Agreement. The Inspection Period shall expire on **December 31, 2027** (the "Inspection Period"). Purchaser shall have determined, in its sole discretion, during the Inspection Period that: (a) the Real Estate (i) does not contain any subterranean, karst, or other defects or conditions which impair or adversely affect Purchaser's Intended Use or development of the Real Estate or require extraordinary or unusually costly development techniques or measures, and (ii) is in all other respects suitable and feasible for and will support and permit Purchaser's Intended Use and development; (b) the obtaining of all financing, tax credits, subdivision, platting, zoning, variances, vacations, releases, authorizations, engineering approvals, permits and approvals and incentives, public and private, necessary for Purchaser's Intended Use and development ("Governmental Approvals"), are satisfactory to Purchaser; (c) the Real Estate is free and clear of any and all asbestos, toxic or hazardous material or contaminant and/or the threat of contamination thereby; (d) all utilities necessary or appropriate for Purchaser's Intended Use and development of the Real Estate are available at the property lines in sufficient quantities, pressures and/or capacities for Purchaser's Intended Use and development, without hookup, tap in or other charges excepting only charges normally incurred and charged by the applicable public utilities; and (e) it is satisfied in all respects, and in Purchaser's sole discretion, with the Real Estate and the feasibility of its development. In the event Purchaser fails to give Seller written notice of its disapproval of the condition of the Real Estate prior to the expiration of the Inspection Period, Purchaser

shall be deemed to have approved the condition of the Real Estate. Seller authorizes Purchaser to file for and obtain such Governmental Approvals and agrees to execute such applications, petitions, easements, covenants, agreements and instruments as in Purchaser's judgment may be necessary or appropriate to file for and obtain such Governmental Approvals and the parties agree that the closing of the transaction contemplated in this Contract is expressly contingent upon Purchaser's ability to receive the Governmental Approvals in final non-appealable form.

8.4 Litigation and Representation. As of the Closing Date, no action or proceeding before a court or other governmental agency or officer shall be pending (and to the best of either Seller's or Purchaser's knowledge, no such action or proceeding shall be threatened) that might impair the value of the Real Estate or prevent Purchaser from undertaking and completing Purchaser's Intended Use and development of the Real Estate. As of the Closing Date, the representation and warranties set forth in Section 10 shall be true and accurate.

8.5 Contingency. This Agreement is contingent upon the purchaser receiving a reservation of IRS Section 42 tax credits from the Michigan State Housing Development Authority (the "Contingency").

9. Nonperformance. In the event that one or more of the conditions set forth in Section 8 are not timely and completely satisfied, Purchaser, at its sole discretion, may grant additional time to Seller to remedy any defect or may cancel this Contract and all of its obligations hereunder by written notice to Seller, in which event (without limiting Purchaser's other rights or remedies for any breach of this Contract by Seller) all Earnest Money deposited to date, shall be immediately refunded to Purchaser. If pursuant to any provision of this Contract the Purchaser elects to grant Seller additional time to remedy a defect or meet a condition of the Contract, all time limits affecting the Purchaser shall be extended by the amount of time given the Seller.

10. Representations and Warranties. Seller hereby represents and warrants to and covenants and agrees with Purchaser (and shall be deemed to represent and warrant and covenant and agree on the Closing Date) that (a) there is no condemnation or similar proceeding which is pending or threatened against the Real Estate or any part thereof; (b) Seller has not received any notification from any governmental agency, authority or instrumentality of any pending or threatened assessments on or against the Real Estate for the cost of public improvements to be made with respect to the Real Estate or any part thereof; (c) after the Acceptance Date, Seller will not enter into any lease or other agreement affecting the Real Estate or the possession, use or control thereof or terminate, modify or amend any existing lease or other agreement without first obtaining the written consent of Purchaser; (d) after the Acceptance Date, Seller will not create, permit or suffer any lien or other encumbrance to attach to or affect the Real Estate and improvements thereon, if any, except for the lien of non-delinquent real estate taxes; (e) there are no underground fuel, chemical or other storage tanks or associated equipment located in the Real Estate, or the Real Estate has not been used for the treatment, storage or disposal of or otherwise contaminated by any hazardous or special wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations); (f) Seller has fee simple, marketable, indefeasible and insurable right and title to the Real Estate; (g) Seller has no knowledge of the existence of karst terrain on the Real Estate; (h) to the best of Seller's knowledge, there has been no release nor is there currently any threatened release of any hazardous, special or other wastes, substances, materials, constituents, pollutants or contaminants (as defined by federal, state or local laws, statutes, ordinances, rules or regulations) on the Real Estate; (i) to the extent there are contracts or agreements affecting the Real Estate (including, for example, management or service agreements), Seller will: (i) cancel before closing all such contracts and agreements; (ii) pay all amounts due under, and settle all accounts with respect to, any such contracts and agreements; and (iii) deliver to Purchaser at closing evidence that any such contracts and agreements have been canceled and all such amounts and accounts have been paid and settled; (i) to the extent Seller is an entity, it is duly organized, validly existing and in good standing in its jurisdiction or organization; and (j)

that this Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms.

11. Damage and Condemnation. If at any time after the Acceptance Date (a) the Real Estate shall be condemned, damaged or destroyed, in whole or in part; or (b) any notice of condemnation shall be given, then Purchaser, at its sole option, may cancel the Contract or proceed with closing. If Purchaser elects to proceed with closing, then Purchaser may (a) apply the proceeds of any condemnation award or insurance policy to reduce the Purchase Price; or (b) accept an assignment of such proceeds. If Purchaser elects to cancel this Contract, as provided in this paragraph, all Earnest Money deposited shall be immediately refunded to Purchaser. Seller shall bear all risk of loss of any nature whatsoever to the Real Estate until closing.

12. Inspection. Purchaser, its employees, agents and independent contractors shall have the right to enter upon the Real Estate and conduct all tests and examinations which Purchaser deems necessary at its sole cost and expense. Purchaser indemnifies Seller from any damages occasioned thereby. Purchaser shall restore Real Estate to the existing condition before said tests or examinations were conducted.

13. Notices. All notices, demands, instructions or requests to be given to either party hereunder shall be in writing and sent by: (a) electronic mail with read receipt; (b) facsimile transmission; (c) overnight delivery service; (d) personal delivery; or (e) registered or certified U.S. Mail, return receipt requested; and addressed to the first address above written. Any notice that is actually received shall be effective regardless of the manner in which it was sent or delivered.

14.1 Default by Seller. Seller agrees that money damages are not an adequate remedy for breach of this Contract by Seller, and, in addition to any other remedies available to Purchaser in the event of a breach by Seller, Purchaser shall be entitled to: (a) the remedy of specific performance to enforce the terms hereof; and/or (b) cancel this Contract and all of its obligations hereunder by written notice to Seller, in either of which events the Earnest Money shall be refunded immediately to Purchaser. In the event of any such breach, Purchaser shall be entitled to recover, in addition to all other remedies and damages, reasonable attorneys' fees and court costs incurred.

14.2 Default by Purchaser. In the event of a breach of this Contract by Purchaser, Seller may, as its sole remedy hereunder, rescind this Contract and retain the Earnest Money as liquidated damages.

15. Assignment/ Successors and Assigns. This Contract shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of both Purchaser and Seller. This Contract may not be assigned by Seller. Purchaser may assign this agreement without Seller consent.

16. Survival and Indemnity. All representations and warranties set forth in this Contract, shall survive the closing, and for a period of one (1) year after the Closing Date, Seller and Purchaser shall each hold the other harmless from and against all costs and damages (including attorneys' fees and court costs) incurred as a result of any breach of any representation or warranty by Seller or Purchaser, respectively.

17. General. The terms and provisions of this Contract shall be governed and construed in accordance with the laws of the State of Michigan. The captions and section numbers shall not be considered in any way to affect the interpretation of this Contract. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and personal representatives. This Contract is the final expression of the complete and exclusive agreement between Seller and Purchaser and supersedes all prior offers, negotiations and discussions. The term Contract, as used herein means the contract arising between the parties on the terms of this Offer after acceptance by Seller. This Contract may

be executed in 2 or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same contract.

18. Authority. Except as expressly provided otherwise herein, each undersigned person signing on behalf of any party that is a corporation, partnership or other entity certifies that (a) he is fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, by-laws, partnership agreement or other agreement to execute and deliver this Contract for and on behalf of said party; (b) that said party has full capacity, power and authority to enter into and carry out its obligations under this Contract; and (c) that this Contract has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

19. Attorneys' Fees. Either party to this Contract who is the prevailing party in any legal or equitable proceeding against any other party to this Contract brought under or with relation to the Contract or the transaction contemplated hereby shall, in addition to any other remedy at law or provided for herein, be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

20. Duration of Offer. This Offer shall expire if written acceptance endorsed herein is not delivered to Purchaser on or before **5:00 PM, September 27, 2024.**

21. Real Estate Brokerage Representation. Purchaser and Seller both represent and warrant to one another that no real estate brokers or agents have been used or consulted in connection with the purchase and sale of the Real Estate. Any fees, real estate commissions, costs and/or expenses due to Seller's real estate brokers or agents will be paid exclusively by Seller. Each party covenants and agrees to defend, indemnify and save the other harmless from any actions, damages, fees, real estate commissions, costs and/or expenses (including reasonable attorneys' fees) relating to a breach or alleged breach of the foregoing representation and warranty.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

This Offer to Purchase Real Estate is hereby executed this ____ day of _____ 2024 as to Purchaser.

PURCHASER:

Spire Development, Inc.

By: _____

Printed Name: Thomas Grywalski

Title: President

ACCEPTANCE OF OFFER

Seller hereby accepts the foregoing Offer to Purchase Real Estate on this ____ day of _____ 2024.

SELLER: City of Muskegon

By:

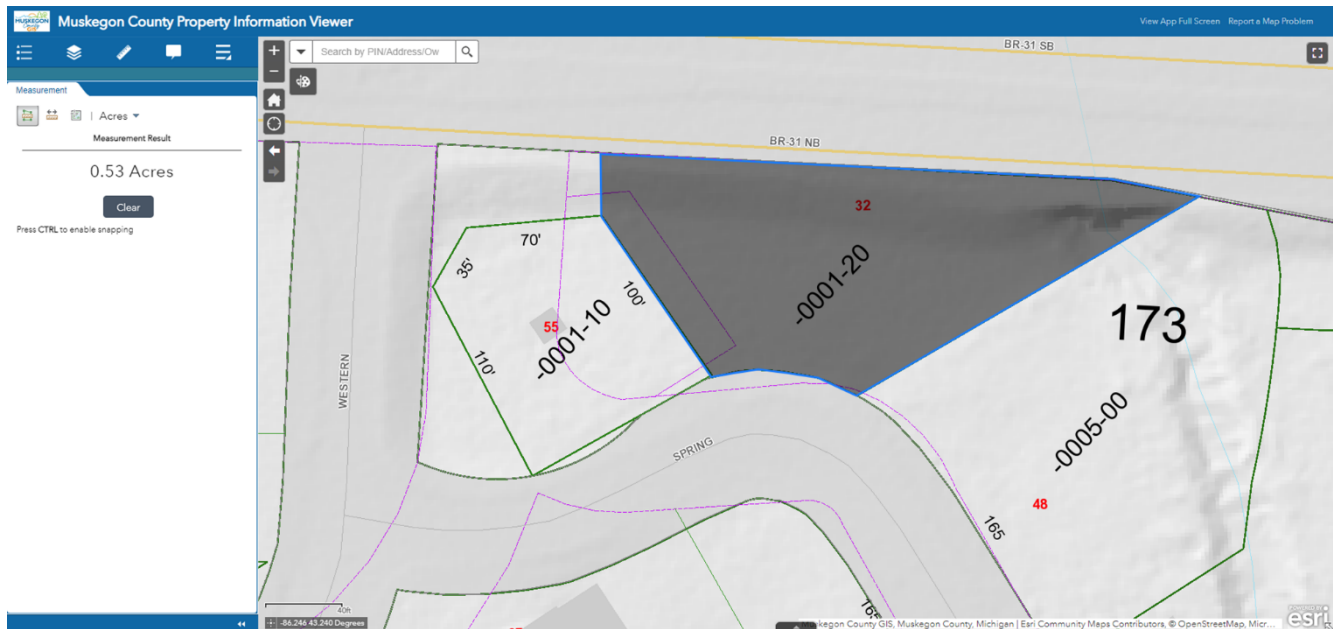
Its:

EXHIBIT A

Parcel/Tax ID number(s):

61-24-205-554-0001-20

+/- 0.53 acres



WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Berkshire Spring Street LIHTC Municipal Services Agreement							
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development							
Brief Summary: General Capital is taking another shot at their new construction Low Income Housing Tax Credit application that was not approved last December by the Michigan Statewide Housing Development Authority. The application requires approved Contracts for Housing Exemption and Municipal Services Agreements.								
Detailed Summary & Background: Pursuant to our 5 Year Housing Needs Assessment's call for over 1,000 rental units priced under \$1,430 a month, staff has made overtures and established relationships with several new and existing LIHTC developers. General Capital has already successfully completed two new construction facilities in our community, and is seeking to complete a third with the Spring Street Berkshire Apartments. This site will support 53 affordable senior apartments. General Capital is seeking a Municipal Services Charge of 3% of net shelter rents. This should equal roughly \$15,000 per year for the city to keep to defray costs of public service delivery to the site. General Capital is also requesting a 5% Payment in lieu of Taxes agreement, which is detailed in another agenda item in the packet.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Retain youth within the city Progress toward completion of ongoing economic development projects Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Recommended Motion: Motion to approve the Municipal Services Agreement between GenCap Spring Street Limited Dividend Housing Association, LLC and the City of Muskegon, and authorize the mayor and clerk to sign.								

Approvals:

Immediate Division Head		
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

Yes

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this ___ day of S e p t e m b e r , 2 0 2 4 between **GenCap Spring Street Limited Dividend Housing Association, LLC, a Michigan limited liability company** its successors and/or assigns (the “Sponsor”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Developer has assumed an agreement to purchase a site in the City of Muskegon known as Berkshire Spring Street for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Developer acknowledges that such needs may be greater than typically situated residential developments.

D. The Developer desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Developer shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect (the “Municipal Service Fee”). The Municipal Service Fee shall be three (3%) percent of the net rent adjusted for vacancies received annually, excluding project paid utilities, starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City’s fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Developer shall submit, upon request, a copy of the annual audit of the Project prepared by an independent CPA’s along with the payment of the Municipal Service Fee.
5. **Exclusive Benefit.** The obligations of the Developer hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Developer agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Developer agrees to be liable for all costs of collection including reasonable attorney’s fees and costs incurred by the City in the enforcement of the terms of this Agreement, if Developer is found to be in default of this Agreement by a court of competent jurisdiction.
7. **Assignment.** Upon the written consent of the City, the Developer may transfer or assign its rights and obligations under this Agreement to a buyer (“Transferee”) of the Project. The Transferee must agree to assume the Developer’s obligations under this Agreement and the Development Agreement which has been executed by the Developer with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Developer shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Developer may assign this Agreement, without the written consent of the City, to an affiliate of Developer (provided that such affiliate agrees to assume the Developer’s obligations hereunder and provided that the Developer and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Developer).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Developer:

GenCap Spring Street Limited Dividend Housing Association, LLC
David Weiss
6938 North Santa Monica Blvd
Fox Point, WI 53217

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

Municipal Services
Agreement Signature Page

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

CITY:

CITY OF MUSKEGON

Dated: _____, 2023

By: _____
Ken Johnson, Mayor

Dated: _____, 2023

By: _____
Ann Meisch, City Clerk

DEVELOPER:

**GenCap Spring Street Limited Dividend Housing
Association, LLC a Michigan LLC**

By: _____
Name: _____
Its: Authorized Signer

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Berkshire Spring Street Contract for Housing Exemption (PILOT Agreement)						
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development						
Brief Summary: General Capital is resubmitting their proposed new construction affordable senior living development at 162 East Apple to MSHDA, and requires an updated Payment In Lieu of Taxes agreement.							
Detailed Summary & Background: Pursuant to our 5 Year Housing Needs Assessments call for over 1,000 rental units priced under \$1,430 a month, staff has made overtures and established relationships with several new and existing LIHTC developers. General Capital has already successfully completed two new construction facilities in our community, and is seeking to complete a third with the Berkshire Spring Street Project. This site will support 53 affordable senior apartments. General Capital is seeking a Payment in lieu of Taxes (PILOT) of 5% of net shelter rents. This should equal roughly \$21,500 per year for the city to divide between taxing jurisdictions. General Capital is also requesting a 3% Municipal Services Charge, which is detailed in another agenda item in the packet.							
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> Diverse housing types Progress toward completion of ongoing economic development projects <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business							
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td></tr></table>	Yes		No		N/A	
Yes		No		N/A			
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td></tr></table>	Yes		No		N/A	
Yes		No		N/A			
Recommended Motion: Motion to accept the Contract for Housing Exemption between GenCap Spring Street Limited Dividend Housing Association, LLC as presented, and authorize the mayor and clerk to sign.							
Approvals:	Guest(s) Invited / Presenting:						

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

CITY OF MUSKEGON

CONTRACT FOR HOUSING EXEMPTION

This Agreement between **GenCap Spring Street Limited Dividend Housing Association, LLC**, a Michigan limited partnership/liability company/corporation, whose address is 6938 North Santa Monica Blvd, Fox Point WI 53217 (the "Sponsor") and **CITY OF MUSKEGON**, whose address is 933 Terrace Street, Muskegon, Michigan (the "City") is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II "Taxation" of the City Code of Ordinances, providing for tax exemption (the "Ordinance") and providing for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.) (the "Act");

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low-income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of the Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Agreement are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

C. The City acknowledges that the Sponsor identified above has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan, to construct/acquire and rehabilitate, own and operate a proposed low-income housing project identified as Berkshire Spring Street on certain property located in the City at 162 East Apple Avenue (the "Project") to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes.

D. The Sponsor, or an affiliate of the Sponsor has entered an agreement to form a limited dividend housing association limited liability company to function as owner of the proposed low-income housing Project. The owning entity is **GenCap Spring Street Limited Dividend Housing Association, LLC**.

E. The City desires to encourage construction and financing of the low-income housing Project which is identified by the working name of Berkshire Spring Street.

F. To further enable and encourage the construction of the housing Project, the Sponsor and the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1. "Authority" means the Michigan State Housing Development Authority.

1.2. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

1.3. "Contract Rents" means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities.

1.4. "Low Income Persons and Families" means persons and families eligible to move into a housing project.

1.5. "LIHTC" means the low income housing tax credit administered by the Authority under Section 42 of the Internal Revenue Code, as amended.

1.6. "Mortgage Loan" means a loan that is Federally-Aided Mortgage (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. "Net Shelter Rent" means all collected rents on the subject project property accounting for point-in-time vacancies.

1.8. "Sponsor" means **GenCap Spring Street Limited Dividend Housing Association, LLC** and any entity that receives or assumes a Mortgage Loan.

1.9. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

1.10. "Low Income Persons and Families" means persons and families eligible to move into a housing project utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the "Act"), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible Low-Income Persons and Families as defined above.

3. Term of Exemption. This exemption shall begin on the tax day of the year in which a final

certificate of compliance or occupancy is issued by the City, and shall continue for the period the housing project remains subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Code of 1986, as amended (the "IRS Code"), or a Mortgage Loan remains outstanding, not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is subject to the income and rent restrictions under Section 42 of the IRS Code or is subject to a Mortgage Loan, provided that the said Mortgage Loan continues outstanding as more particularly set forth in Section 82-50 of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Sponsor. The Sponsor agrees to perform the following:

4.1 The Sponsor shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1 of each year, beginning in the first year following the year in which the exemption is first effective, and continuing throughout the time the exemption is in effect. The service charge shall equal five percent (5%) of the Net Shelter Rents charged for all the LIHTC certified units in the exempt housing project for the preceding calendar year, exclusive of the utility charges paid by the project.

4.2 The Sponsor agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low-income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31 of each year, as required by Section 82-55 of the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, or within 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that it has reviewed the Sponsor's proposal for the construction or rehabilitation of the Project, and that receipt of a Mortgage Loan from the Authority or an allocation of low-income housing tax credits by the Authority will satisfy the eligibility requirements of Section 82-50 of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

7. Payment of Service Charge. The annual service charge in lieu of taxes as established by this Agreement shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before July 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 4.1, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families as defined in Section 1.10 shall be equal

to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

12. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

13. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

CITY OF MUSKEGON

By: _____ Ken Johnson
Its: Mayor
Dated: _____

By: _____ Ann Meisch
Its: City Clerk
Dated: _____

**GenCap Spring Street Limited Dividend Housing
Association, LLC a Michigan LLC**

By:____
Print:
Its:
Dated: _____

EXHIBIT A

LEGAL DESCRIPTION

That part of Block 215, Revised Plat of 1903, City of Muskegon, Muskegon County, Michigan, described as: Beginning at a point on the East line of said Block 215, being 75.00 feet from the Northeast corner of Lot 1, said Block 215; thence N88°00'03"W, 155.07 feet parallel with the North line of said Block 215; thence N01°59'57"E, 25.00 feet; thence N88°00'03"W, 80.00 feet parallel with the North line of said Block 215; thence S58°35'03"W, 95.19 feet to the Easterly right of way line of Spring Street; thence S31°24'57"E, 196.80 feet along said Easterly right of way line to the North right of way line of Apple Avenue; thence S88°11'51"E, 206.57 feet along said North right of way line to the East line of said Block 215; thence N01°52'25"E, 190.98 feet along said East line to the Point of Beginning, containing 1.22 acres of land. Subject to easements, restrictions and rights of way of record.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Froebel School Project Updated Municipal Services Agreement							
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development							
Brief Summary: Samaritas plans to submit Froebel School to MSHDA on October 1 for consideration for Low Income Housing Tax Credits. They must have an approved Municipal Services Agreement with the City in order to be eligible.								
Detailed Summary & Background: For several years staff have been attempting to find a partner that had interest and capacity in the adaptive reuse of the long-vacant Froebel School building. Since 2019, we have toured more than 10 entities through the school, and held a community meeting offering several touring opportunities for the public. Through these efforts we have developed interest from Samaritas for the potential installation of affordable housing units by application to the Michigan Statewide Housing Development Authority (MSHDA) Low Income Housing Tax Credit (LIHTC) Program. If awarded, then Samaritas proposes historical preservation and adaptive remodel of the school building into apartments for low to moderate income residents. The attached agreement establishes their Municipal Services Agreement at 3% of shelter rents, which should result in roughly \$11,000 annually for the city. If approved by commission, Samaritas is also proposing a PILOT payment of 2% of net shelter rents, for a total annual payment of 5% of rents. The Municipal Services Agreement (MSA) stays completely with the city to defray costs of public service delivery to the site, while the PILOT payment is divided proportionally to the other taxing jurisdictions, similar to a traditional property tax payment.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> Blight cleanup Diverse housing types Progress toward completion of ongoing economic development projects <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Fund(s) or Account(s):	Budget Amendment Needed:							

N/A		<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>N/A</td> <td></td> </tr> </table>				Yes		No		N/A										
Yes		No		N/A																
Recommended Motion: Motion to approve the Municipal Services Agreement between the City of Muskegon and Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership as presented, and to authorize the mayor and clerk to sign.																				
Approvals: <table border="1"> <tr> <td>Immediate Division Head</td> <td></td> <td></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td></td> <td></td> </tr> <tr> <td>Communication</td> <td></td> <td></td> </tr> <tr> <td>Legal Review</td> <td></td> <td></td> </tr> </table>			Immediate Division Head			Information Technology			Other Division Heads			Communication			Legal Review			Guest(s) Invited / Presenting: Yes		
Immediate Division Head																				
Information Technology																				
Other Division Heads																				
Communication																				
Legal Review																				

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this 12th day of S e p t e m b e r, 2024 between **Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership, a Michigan limited liability company** its successors and/or assigns (the “Sponsor”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Developer has assumed an agreement to purchase a site in the City of Muskegon known as Froebel Place for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Developer acknowledges that such needs may be greater than typically situated residential developments.

D. The Developer desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Developer shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect (the "Municipal Service Fee"). The Municipal Service Fee shall be three (3%) percent of the net rent adjusted for vacancies received annually, excluding project paid utilities, starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City's fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Developer shall submit, upon request, a copy of the annual audit of the Project prepared by an independent CPA's along with the payment of the Municipal Service Fee.
5. **Exclusive Benefit.** The obligations of the Developer hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Developer agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Developer agrees to be liable for all costs of collection including reasonable attorney's fees and costs incurred by the City in the enforcement of the terms of this Agreement, if Developer is found to be in default of this Agreement by a court of competent jurisdiction.
7. **Assignment.** Upon the written consent of the City, the Developer may transfer or assign its rights and obligations under this Agreement to a buyer ("Transferee") of the Project. The Transferee must agree to assume the Developer's obligations under this Agreement and the Development Agreement which has been executed by the Developer with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Developer shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Developer may assign this Agreement, without the written consent of the City, to an affiliate of Developer (provided that such affiliate agrees to assume the Developer's obligations hereunder and provided that the Developer and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Developer).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Developer: Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership

Attn: CEO
8131 East Jefferson Avenue
Detroit, MI 48214

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

Municipal Services Agreement
Signature Page

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

CITY:

CITY OF MUSKEGON

Dated: _____, 2024

By: _____
Ken Johnson, Mayor

Dated: _____, 2024

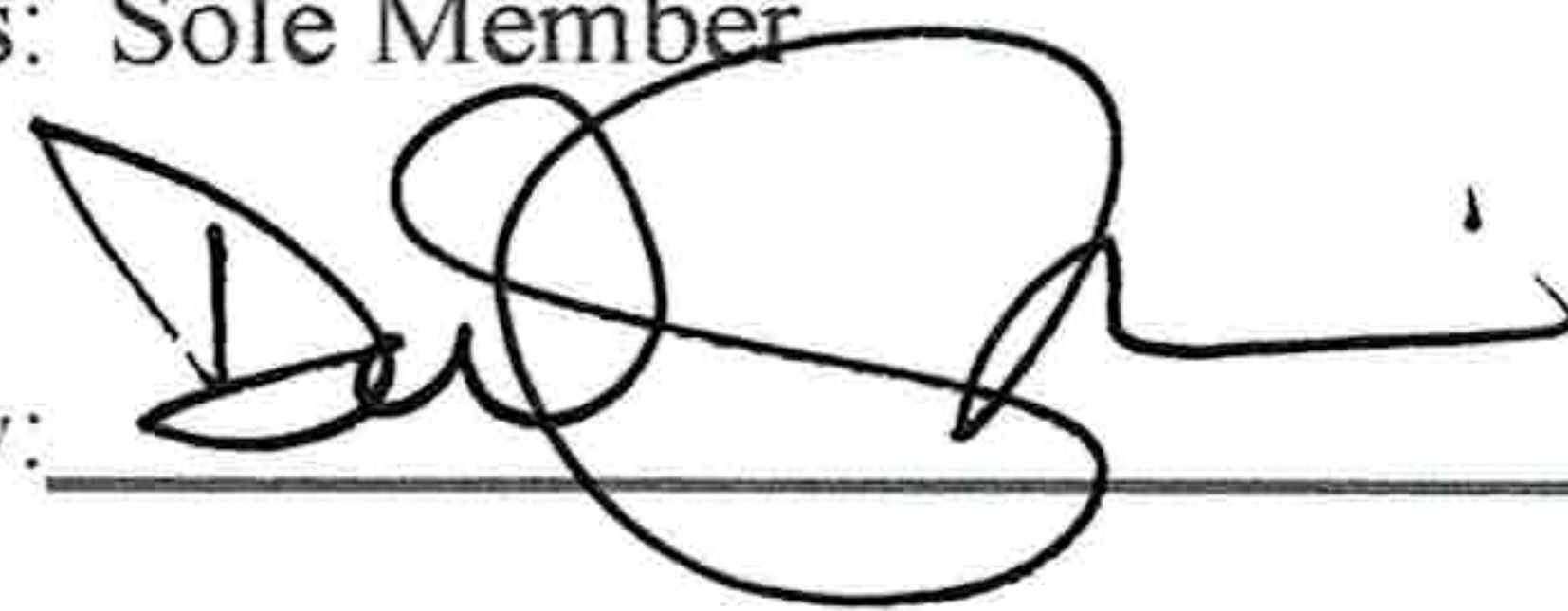
By: _____
Ann Meisch, City Clerk

DEVELOPER:

**SAMARITAS AFFORDABLE LIVING FROEBEL
LIMITED DIVIDEND HOUSING ASSOCIATION
LIMITED PARTNERSHIP,**
a Michigan limited partnership

By: Samaritas Affordable Living Froebel GP, LLC, a
Michigan limited liability company
Its: General Partner

By: Samaritas, a Michigan non-profit corporation
Its: Sole Member

By:  _____

Print: David J Morin

Its: Interim CEO
Dated: 9/12/24

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Froebel School Updated Contract for Housing Exemption
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development
Brief Summary: Staff and Samaritas have worked on various initiatives over the last 10 months to make Froebel School a more competitive LIHTC project in the statewide scoring system, and are now requesting Commission approval to submit to MSHDA for the October 2024 round.	
Detailed Summary & Background: For several years staff have been attempting to find a partner that had interest and capacity in the adaptive reuse of the long-vacant Froebel School building. Since 2019, we have toured more than 10 entities through the school, and held a community meeting offering several touring opportunities for the public. Through these efforts we have developed interest from Samaritas for the potential installation of affordable housing units by application to the Michigan Statewide Housing Development Authority (MSHDA) Low Income Housing Tax Credit (LIHTC) Program. If awarded, then Samaritas proposes historical preservation and adaptive remodel of the school building into apartments for low to moderate income residents. The attached agreement establishes their payment in lieu of taxes as 2% of net shelter rents. This should result in roughly \$7,500 annually to be divided between taxing jurisdictions. In the last 10 months since the previous LIHTC submission round staff has worked with Samaritas and the Muskegon County Land Bank to achieve a 1.4 million dollar grant to assist with hard costs on the project, and Samaritas has been approved for Historic Tax Credits which will also help the bottom line. The total project investment is projected at \$16.5 million. Note that this is the lowest proposed PILOT of our proposed MSHDA submissions. This is due to the facts that we are the owners of this facility and will incur significant costs to demolish or otherwise redevelop the site, and that Samaritas is a non-profit housing developer with limited capacity to finance and construct facilities compared with for-profit housing development firms. If approved by commission, Samaritas is also proposing a Municipal Services Agreement of 3% of net shelter rents, for a total annual payment of 5% of rents. The Municipal Services Agreement (MSA) stays completely with the city to defray costs of public service delivery to the site, while the PILOT payment is divided proportionally to the other taxing jurisdictions, similar to a traditional property tax payment.	
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> Blight cleanup Diverse housing types Retain youth within the city	

Progress toward completion of ongoing economic development projects

Goal/Action Item:

2027 Goal 2: Economic Development Housing and Business

Amount Requested:

N/A

Budgeted Item:

Yes		No		N/A	
-----	--	----	--	-----	--

Fund(s) or Account(s):

N/A

Budget Amendment Needed:

Yes		No		N/A	
-----	--	----	--	-----	--

Recommended Motion:

Motion to accept the Contract for Housing Exemption between the City of Muskegon and Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership as presented, and to authorize the mayor and clerk to sign.

Approvals:

Immediate Division Head		
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

Yes

CITY OF MUSKEGON

CONTRACT FOR HOUSING EXEMPTION

This Agreement between **Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership**, a Michigan limited partnership/liability company/corporation, whose address is 8131 East Jefferson Ave Detroit, MI 48214 (the "Sponsor") and **CITY OF MUSKEGON**, whose address is 933 Terrace Street, Muskegon, Michigan (the "City") is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II "Taxation" of the City Code of Ordinances, providing for tax exemption (the "Ordinance") and providing for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.) (the "Act");

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low-income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of the Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Agreement are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

C. The City acknowledges that the Sponsor identified above has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan, to construct/acquire and rehabilitate, own and operate a proposed low-income housing project identified as Froebel Place on certain property located in the City at 417 Jackson Avenue (the "Project") to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes.

D. The Sponsor, or an affiliate of the Sponsor to be formed, has entered or will enter into an agreement to form a limited dividend housing association limited partnership or limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as **Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership**.

E. The City desires to encourage construction and financing of the low-income housing Project which is identified by the working name of **Froebel Place**.

F. To further enable and encourage the construction of the housing Project, the Sponsor and the City enter into this Agreement.

G. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1. "Authority" means the Michigan State Housing Development Authority.

1.2. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

1.3. "Contract Rents" means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities.

1.4. "Low Income Persons and Families" means persons and families eligible to move into a housing project.

1.5. "LIHTC" means the low income housing tax credit administered by the Authority under Section 42 of the Internal Revenue Code, as amended.

1.6. "Mortgage Loan" means a loan that is Federally-Aided Mortgage (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. "Net Shelter Rent" means all collected rents on the subject project property accounting for point-in-time vacancies.

1.8. "Sponsor" means **Samaritas Affordable Living Froebel Limited Dividend Housing Association Limited Partnership**, and any entity that receives or assumes a Mortgage Loan.

1.9. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

1.10. "Low Income Persons and Families" means persons and families eligible to move into a housing project utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the "Act"), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible Low-Income Persons and Families as defined above.

3. Term of Exemption. This exemption shall begin on the tax day of the year in which a final certificate of compliance or occupancy is issued by the City, and shall continue for the period the housing project remains subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Code of 1986, as amended (the "IRS Code"), or a Mortgage Loan remains outstanding, not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is subject to the income and rent restrictions under Section 42 of the IRS Code or is subject to a Mortgage Loan, provided that the said Mortgage Loan continues outstanding as more particularly set forth in Section 82-50 of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Sponsor. The Sponsor agrees to perform the following:

4.1 The Sponsor shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1 of each year, beginning in the first year following the year in which the exemption is first effective, and continuing throughout the time the exemption is in effect. The service charge shall equal two percent (2%) of the net shelter rents charged for all the LIHTC certified units in the exempt housing project for the preceding calendar year, exclusive of the utility charges paid by the project.

4.2 The Sponsor agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low-income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31 of each year, as required by Section 82-55 of the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, or within 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that it has reviewed the Sponsor's proposal for the construction or rehabilitation of the Project, and that receipt of a Mortgage Loan from the Authority or an allocation of low-income housing tax credits by the Authority will satisfy the eligibility requirements of Section 82-50 of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

7. Payment of Service Charge. The annual service charge in lieu of taxes as established by this Agreement shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before July 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 4.1, the

service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families as defined in Section 1.10 shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

12. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

13. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

CITY OF MUSKEGON

By: _____

Ken Johnson

Its: Mayor

Dated: _____

By: _____

Ann Meisch

Its: City Clerk

Dated: _____

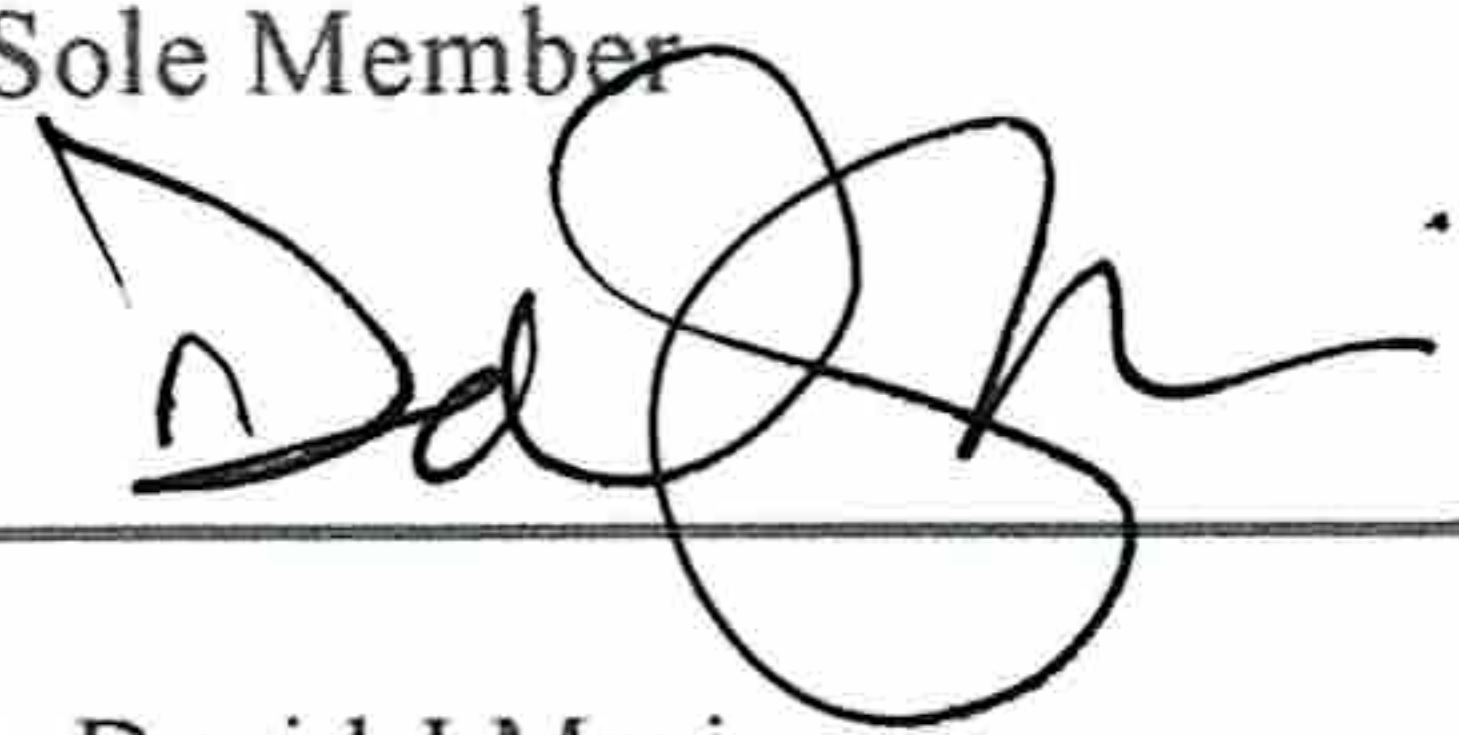
**SAMARITAS AFFORDABLE LIVING FROEBEL
LIMITED DIVIDEND HOUSING ASSOCIATION
LIMITED PARTNERSHIP,**
a Michigan limited partnership

By: Samaritas Affordable Living Froebel GP, LLC, a
Michigan limited liability company

Its: General Partner

By: Samaritas, a Michigan non-profit corporation

Its: Sole Member

By:  _____

Print: David J Morin

Its: Interim CEO

Dated: 9/12/24

EXHIBIT A

LEGAL DESCRIPTION

A PORTION OF THE FOLLOWING DESCRIBED PARCEL TO BE DETERMINED BY A SURVEY:

CITY OF MUSKEGON REVISED PLAT OF 1903 BLKS 25 & 26 ALSO BLK 27 EXCEPT
LOTS 6 & 7 ALSO BLK 24 EXCEPT S 12 FT OF W 1/2 LOT 2 BLK 24

61-24-205-024-0001-00

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Lighthouse Lofts Municipal Service Agreement							
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development							
Brief Summary: Pivotal Development is seeking an award of Low Income Housing Tax Credits from MSHDA to facilitate an affordable family apartment complex at 90 Hartford Street. They require a municipal services agreement approved by the City of Muskegon prior to the application date on 10/1/2024.								
Detailed Summary & Background: Pivotal Development was successfully awarded one LIHTC project by MSHDA in our community in the 2023 round, and are now proposing another project. Staff is recommending a 3% Municipal Services Charge in the attached agreement in order to defray the costs of public service delivery to the site. This payment should provide roughly \$9,000-11,000 annually.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> Diverse housing types <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>☒</td><td></td></tr></table>	Yes		No		N/A	☒	
Yes		No		N/A	☒			
Recommended Motion: Motion to accept the Municipal Services Agreement between the City of Muskegon and Lighthouse Lofts Limited Dividend Housing Association LLC as presented and authorize the mayor and clerk to sign.								
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>☒</td><td></td></tr><tr><td>Information</td><td>☐</td><td></td></tr></table>	Immediate Division Head	☒		Information	☐		Guest(s) Invited / Presenting: Yes	
Immediate Division Head	☒							
Information	☐							

Technology			
Other Division Heads			
Communication			
Legal Review			

MUNICIPAL SERVICES AGREEMENT

THIS MUNICIPAL SERVICES AGREEMENT (“Agreement”) is entered into on this 10th day of September 2024 between **Lighthouse Lofts Limited Dividend Housing Association LLC, a Michigan limited liability company** its successors and/or assigns (the “Sponsor”) and the **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, MI 49440 (the “City”) is made pursuant to the following terms:

RECITALS

A. Developer has assumed an agreement to purchase a site in the City of Muskegon known as Lighthouse Lofts for the construction of a proposed low-income housing project (the “Project”).

B. The parties recognize that due to the high concentration of persons residing at the Project that the City will be providing a higher level and greater amount of Municipal Services (as defined in this Agreement) to the Project.

C. The City, through its Police and Fire Departments and otherwise, provides Municipal Services within the City. The Project will have special needs for these types of Municipal Services and Developer acknowledges that such needs may be greater than typically situated residential developments.

D. The Developer desires to guarantee that certain Municipal Services will be provided to the Project during the term that the Payment in Lieu of Tax (hereinafter referred to as the “Contract for Housing Exemption”) Ordinance for this Project is in place, such Municipal Services to include, but not be limited to:

1. Emergency services, including police and fire services specifically administered through the City, and, on public streets and sidewalks, maintenance, repair, snow removal, and street lighting; also to include other matters as the City deems necessary;
2. Other miscellaneous services as may, from time to time, be mutually agreed to for the benefit of the Project;
3. Said municipal services shall be provided in the customary way and in accordance with all laws, rules and regulations of the United States of America, State of Michigan, County of Muskegon and City of Muskegon or other applicable jurisdictions or bodies.

(All of the above collectively referred to as “Municipal Services”)

4. Nothing in this Agreement shall be deemed to waive any defense to claims based on sovereign or governmental immunity.

AGREEMENT

The parties agree as follows:

1. **Provision of Services.** The City will provide the Municipal Services.
2. **Payment.** The Developer shall pay a service charge on or before July 1, of each year during the time the CONTRACT FOR HOUSING EXEMPTION is in effect (the “Municipal Service Fee”). The Municipal Service Fee shall be three (3%) percent of the net rent adjusted for vacancies received annually, excluding project paid utilities, starting during the calendar year that a unit in the Project is placed in service. The first year shall be pro-rated based on that portion of the City’s fiscal year (July 1 – June 30) that any unit is ready to be placed in service.
3. **Term.** Payment for Municipal Services shall commence during the calendar year the CONTRACT FOR HOUSING EXEMPTION Ordinance becomes effective and continue for as long as the CONTRACT FOR HOUSING EXEMPTION is in effect.
4. **Audit.** Developer shall submit, upon request, a copy of the annual audit of the Project prepared by an independent CPA’s along with the payment of the Municipal Service Fee.
5. **Exclusive Benefit.** The obligations of the Developer hereunder are imposed solely and exclusively for the benefit of the City and no other person or entity shall have the standing to enforce such obligations or be deemed to be beneficiaries of such obligations.
6. **Remedies.** The Developer agrees that if it does not perform its obligations under this Agreement the City is entitled to pursue any and all remedies legal or equitable that it is entitled to under Michigan law. The Developer agrees to be liable for all costs of collection including reasonable attorney's fees and costs incurred by the City in the enforcement of the terms of this Agreement, if Developer is found to be in default of this Agreement by a court of competent jurisdiction.
7. **Assignment.** Upon the written consent of the City, the Developer may transfer or assign its rights and obligations under this Agreement to a buyer (“Transferee”) of the Project. The Transferee must agree to assume the Developer’s obligations under this Agreement and the Development Agreement which has been executed by the Developer with the City. Upon assignment and assumption of this Agreement by the Transferee (or an affiliate, as provided below), the Developer shall be relieved of any further liabilities or obligations accruing under this Agreement or the Development Agreement. Notwithstanding the foregoing, the Developer may assign this Agreement, without the written consent of the City, to an affiliate of Developer (provided that such affiliate agrees to assume the Developer's obligations hereunder and provided that the Developer and assignee give prior notice of the assignment to the City with evidence that the assignee has agreed to assume the obligations of the Developer).

8. **Severability.** If any term or condition of this Agreement is found to be void, invalid, or unenforceable, the validity or enforceability of the remaining terms and conditions shall not be affected or impaired and will continue in full force and effect.

9. **Notices.** All notices under this Agreement must be in writing and sent to the respective parties as follows:

If to Developer:

Attn:
Pivotal Development LLC
ATTN: Brian McGeady
9100 Centre Pointe Drive, Suite 210
West Chester, OH 45069

If to the City:

City of Muskegon
Attn: City Manager
933 Terrace Street
Muskegon, MI 49440

Every notice must be in writing and sent by one of the following methods:

- a. Personal delivery, in which case delivery shall be deemed to occur the day of the delivery;
- b. Certified or registered mail, postage prepaid, return receipt requested, in which case delivery shall be deemed to occur the day it is officially recorded by the U.S. Postal Service that it has delivered it to the intended recipient; or
- c. Next day delivery by a recognized private delivery service such as Federal Express, providing proof of mailing and delivery comparable to certified or registered mail, return receipt requested, in which case delivery shall be deemed to occur upon delivery as recorded by the delivery service.

Either party may change the address provided in this paragraph for itself or its attorney by providing notice of such change to the other party as required in this paragraph.

10. **No Waiver.** No delay, omission, or failure of the City to act under this Agreement or to insist upon strict compliance with any term and condition of this Agreement, and no custom or practice of the parties at variance with the terms and conditions of this Agreement shall constitute a waiver of City's right to demand exact compliance with this Agreement. No waiver of any right or remedy of City shall be construed as a bar to or a waiver of any such right or remedy on any future occasion.

11. **Headings.** The headings in this Agreement have only been inserted for convenience and shall not affect the meaning or interpretation of this Agreement. No heading shall have any legal significance of any nature whatsoever.

12. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, successors, and assigns.

13. **Amendments.** There shall be no modification or amendments to this Agreement, including this section, unless they are in writing and signed by all the parties to this Agreement.

14. **Governing Law.** This Agreement has been executed in the State of Michigan, and shall be governed by Michigan law.

15. **Complete Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral or written representations, negotiations and agreement on the subject matter stated herein.

{Signatures on next page}

Municipal Services Agreement
Signature Page

IN WITNESS WHEREOF, this Municipal Services Agreement is executed as of the day and year first written above.

CITY:

CITY OF MUSKEGON

Dated: _____, 2023

By: _____
Ken Johnson, Mayor

Dated: _____, 2023

By: _____
Ann Meisch, City Clerk

Project:

**Lighthouse Lofts Limited Dividend Housing Association
LLC,**
a Michigan limited liability company

By: **PHP Lighthouse Lofts LLC**
Its: Managing Member

By: Pivotal GP Holding LLC
Its: Sole Member

By: _____
Name: Brian McGeady
Its: President

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2024	Title: Lighthouse Lofts Contract for Housing Exemption						
Submitted by: Jake Eckholm, Development Services Director	Department: Economic Development						
Brief Summary: Pivotal Development is seeking an award of Low Income Housing Tax Credits from MSHDA to facilitate a new construction affordable family apartment complex. They require an approved contract for housing exemption prior to the 10/1/2024 application date.							
Detailed Summary & Background: Pivotal has successfully been awarded one LIHTC allocation on their 2023 project submission in our community, and are now submitting one more in 2024. Notably, they are proposing new construction of affordable family outside of the downtown area, directly next door to Hartford Terrace at 90 Hartford Street. They are requesting a 4% annual PILOT payment, which is what the policy recommends given their location outside the DDA boundaries and service to families in the project. This should provide roughly \$15,000 annually to the City to be split between taxing jurisdictions. Staff recommends approval of this request due to the need for additional housing units at price points under \$1,430 according to our 2023 Housing Needs Assessment. All of the proposed units in this complex, along with all proposed LIHTC developments this round, would be under this threshold.							
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Diverse housing types Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business							
Amount Requested: NA	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td></tr></table>	Yes		No		N/A	
Yes		No		N/A			
Fund(s) or Account(s): NA	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td></tr></table>	Yes		No		N/A	
Yes		No		N/A			
Recommended Motion: Motion to accept the Contract for Housing Exemption between the City of Muskegon and Lighthouse Lofts Limited Dividend Housing Association LLC as presented and authorize the mayor and clerk to sign.							

Approvals:

Immediate Division Head		
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

No

City of Muskegon

CONTRACT FOR HOUSING EXEMPTION

This Agreement between **Lighthouse Lofts Limited Dividend Housing Association LLC**, a Michigan limited partnership/liability company/corporation, whose address is 9100 Centre Pointe Drive, Suite 210 West Chester, OH 45069 (the "Sponsor") and **City of Muskegon**, whose address is 933 Terrace Street, Muskegon, Michigan (the "City") is made pursuant to the following terms:

RECITALS

A. The City has adopted Chapter 82, Article II "Taxation" of the City Code of Ordinances, providing for tax exemption (the "Ordinance") and providing for a service charge in lieu of taxes for a housing project for low income persons and families to be financed with a Federally-aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et seq.) (the "Act");

B. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low-income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low-income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of the Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Agreement are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption.

C. The City acknowledges that the Sponsor identified above has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan, to construct, own and operate a proposed low-income housing project identified as Lighthouse Lofts on certain property located in the City at 90 Hartford Ave, 84 Hartford Ave, 1035 Pine St, and 1017 Pine St, Muskegon, MI 49442

D. (the "Project") to serve low income persons and families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes.

E. The Sponsor, or an affiliate of the Sponsor to be formed, has entered or will enter into an agreement to form a limited dividend housing association limited partnership or limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as Lighthouse Lofts Limited Dividend Housing Association LLC.

F. The City desires to encourage construction and financing of the low-income housing Project which is identified by the working name of Lighthouse Lofts.

G. To further enable and encourage the construction of the housing Project, the Sponsor and the City enter into this Agreement.

H. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

1.1. "Authority" means the Michigan State Housing Development Authority.

1.2. "Annual Shelter Rent" means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

1.3. "Contract Rents" means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed annual period, exclusive of Utilities.

1.4. "Low Income Persons and Families" means persons and families eligible to move into a housing project.

1.5. "LIHTC" means the low income housing tax credit administered by the Authority under Section 42 of the Internal Revenue Code, as amended.

1.6. "Mortgage Loan" means a loan that is Federally-Aided Mortgage (as defined in Section 11 of the Act) or a loan or grant made or to be made by the Authority to the Sponsor for the construction and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7. "Net Shelter Rent" means all collected rents on the subject project property accounting for point-in-time vacancies.

1.8. "Sponsor" means Lighthouse Lofts Limited Dividend Housing Association LLC and any entity that receives or assumes a Mortgage Loan.

1.9. "Utilities" means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

1.10. "Low Income Persons and Families" means persons and families eligible to move into a housing project utilizing the area median income limits published by the U.S. Department of Housing and Urban Development for the City of Muskegon MSA or Muskegon County, whichever is applicable.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the "Act"), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible

Low-Income Persons and Families as defined above.

3. Term of Exemption. This exemption shall begin on the tax day of the year in which a final certificate of compliance or occupancy is issued by the City, and shall continue for the period the housing project remains subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Code of 1986, as amended (the "IRS Code"), or a Mortgage Loan remains outstanding, not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is subject to the income and rent restrictions under Section 42 of the IRS Code or is subject to a Mortgage Loan, provided that the said Mortgage Loan continues outstanding as more particularly set forth in Section 82-50 of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Sponsor. The Sponsor agrees to perform the following:

4.1 The Sponsor shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1 of each year, beginning in the first year following the year in which the exemption is first effective, and continuing throughout the time the exemption is in effect. The service charge shall equal four percent (4%) of the net shelter rents charged for all the LIHTC certified units in the exempt housing project for the preceding calendar year, exclusive of the utility charges paid by the project.

4.2 The Sponsor agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority's administration of the low-income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31 of each year, as required by Section 82-55 of the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, or within 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that it has reviewed the Sponsor's proposal for the construction or rehabilitation of the Project, and that receipt of a Mortgage Loan from the Authority or an allocation of low-income housing tax credits by the Authority will satisfy the eligibility requirements of Section 82-50 of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance.

7. Payment of Service Charge. The annual service charge in lieu of taxes as established by this Agreement shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before July 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, et seq.).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 4.1, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families as defined in Section 1.10 shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

12. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

13. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. The parties agree that for purposes of any dispute in connection with this Agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

City of Muskegon

By: _____ Ken Johnson

Its: Mayor

Dated: _____

By: _____ Ann Meisch

Its: City Clerk

Dated: _____

Project:

Lighthouse Lofts Limited Dividend Housing Association
LLC,

a Michigan limited liability company

By: PHP Lighthouse Lofts LLC

Its: Managing Member

By: Pivotal GP Holding LLC

Its: Sole Member

By: _____

Name: Brian McGeady

Its: President

EXHIBIT A

LEGAL DESCRIPTION

MJ DMS 31007846v10