CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 12, 2021 @ 5:30 P.M.

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.** **Purchase Vacant Property – 209 Merrill** Planning
  - **C.** **Muskegon Area Sports Hall of Fame Lease** Arena
  - **D.** **Buekema Playground – REVISION** Public Works
  - **E.** **Ride Muskegon Operating Agreement** City Manager
- □ **PUBLIC HEARINGS:**
- □ **UNFINISHED BUSINESS:**
- □ **NEW BUSINESS:**
  - **A.** **West Urban Properties PILOT Agreement Progress Report and Phase II Authorization** City Manager
- □ **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.
► (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

□ CLOSED SESSION:

□ ADJOURNMENT:

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY-FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1-22 TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: October 12, 2021	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the September 13, 2021 Worksession, the September 14, 2021 Regular Meeting, and September 28, 2021 Regular Meeting.	
Detailed Summary: N/A	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: To approve the minutes.	
For City Clerk Use Only: Commission Action:	

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, September 13, 2021
5:30 p.m.
City Commission Chambers

Minutes

2021-73

Present: Mayor Gawron, Vice Mayor Hood, Commissioners Rinsema-Sybenga, Emory, Johnson, and German

Absent: Commissioner Ramsey

Alley Paving Policy
The Department of Public Works Director, Leo Evans, presented an Alley Paving Policy for City Commission consideration. An overview of the process is as follows:

Citizens organize amongst their block and complete a (3) three-page application to petition the city to have their alley paved. Application requires designation of a Block Captain to serve as the single point of contact, information on the specific alley, and a roll for the parcels with alley frontage.

The city staff will review all applications and create a shortlist of alleys to be paved on an annual basis. Alleys will be reviewed and prioritized based on access, ownership, utility conditions, use types/frequency, DPW availability for the work, and neighbor support. Not all alleys are candidates for paving. City staff will communicate with the Block Captain on the findings and recommendations.

Unanimous support is not necessary to proceed, however majority support is necessary, and the higher the support the higher the priority.

Once an alley is selected the Block Captain is responsible to collect the fees associated with the paving request and deliver them to the City. Once paid the City will schedule the work during the available paving season (May – October) based on staff availability. Work will take approximately 1 week to complete and residents are asked to minimize their use of the alley during the work.

Alley paving will consist of a singe 12 FT wide late at approximately 2 inches thickness asphalt. No flare outs or widening will be constructed. Any additional work to extend existing paved driveways to meet the paved alley is the homeowners responsibility. City will maintain the alley for its useful life, when full replacement is warranted the process must be restarted.

Discussion took place regarding the proposed policy. This item will be considered at a regular meeting in the future.

<u>Draft Deer Hunting Ordinance</u>
Department of Public Works Director, Leo Evans, presented a draft deer hunting ordinance for City Commission Consideration. An overview of the process is as follows:

Parcels would apply for status as a designated Deer Management Area (DMA). Staff would review applications and present a recommendation to the Commission for approval. Staff would review the following in determining their recommendation:

- Size of parcel (Minimum 5 Acres between maximum of 2 parcels)
- Appropriate areas within the parcel
- Number of hunters
- Shooting Direction
- Duration of DMA designation

Public and/or Private parcels could be considered for DMA status; combined public and private parcels, to meet the 5-acre minimum, would not be considered.

Hunters are required to meet all MDNR rules and regulations, only archery hunting is allowed and only during MDNR approved archery seasons. A legal MDNR harvest tag must be possessed by the hunter and used if a deer is harvested.

Hunting within a public land DMA requires issuance of a permit from the City. A city issued permit is not required for private land.
150 FT setback required from any public building, street, and DMA perimeter is required.

Hunters may not trespass for any reason.

Discussion took place regarding the proposed ordinance. This item will be considered at a regular meeting in the future.

<u>ARP Infill Housing Program</u>
City staff has developed and released a Request for Qualifications for homebuilders to participate in our ARP Infill Housing Program. We received a total of four responses.

Staff is recommending that all four builders be selected to submit formal proposals to construct homes as part of the ARP Infill Housing Program. LRS Enterprises submitted to construct five homes; Williams Construction submitted to construct six homes; Kramer Builders submitted to construct three homes, and West Urban Properties submitted to construct the full $5 Million program. We are using a rough estimate of $250,000 per home, the actual costs will be determined as the builders bid their specific projects with their subcontractors. The breakdown will look something like this:

Builder/Developer	City ARPA Funds	Developer Funds
LRS Enterprises	$750,000	$750,000
Williams Construction	$750,000	$750,000
Kramer Builders	$250,000	$250,000
West Urban Properties	$3,250,000	$3,250,000

Discussion took place regarding the ARP Infill Housing Program. This item will be considered at the September 14, 2021 regular City Commission meeting.

<u>Arena Buildout – Carlisle's</u>
Carlisle's restaurant is officially moving forward at Mercy Health Arena. Staff is seeking approval to perform the construction activities.

After more then two years of planning, we have started demolition of the front entryway at the arena to accommodate the facility's newest restaurant. There are a number of logistics related to the construction timing that is resulting in a logical path forward that includes the City managing the construction project and timeline.

There are a number of key milestones that we must hit, including the two greatest issues: moving doors for the opening of the hockey season in October, and building in compliance with our liquor license. Our lease with Carlisle's calls for them to begin construction after the DDA liquor license is secured – that may take much of October and is not acceptable to the Lumberjacks. To expedite the process, the Arena is seeking to undertake and manage the construction efforts. We would enter into the construction contract with Platinum Construction (Carlisle's contractor). Carlisle's ownership group would then pay us in full once construction is complete. Not that we have their bank approval letter, and their financing is already set. The buildout will take 8-10 weeks at an estimated cost of $647,202.49.

Discussion took place regarding the Arena Buildout for Carlisle's. This item will be considered at the September 14, 2021 regular City Commission meeting.

<u>Marihuana Facilities Update</u>
Jill Montgomery-Keast from Public Health Muskegon County updated the City Commission on how funding is being used to provide education, communication, and outreach related to the use of marihuana. The education is harm-reduction focused. Discussion took place about partnering with the Health Department on the education campaign.

Mike Franzak, Planning Manager, updated the City Commission on Social Equity grants that have been awarded. Two have been awarded. Mr. Franzak also provided some suggested amendments to the Social Equity grant program. The Planning Department is also working the County Clerk to hold an expungement clinic.

Mike went on to provide the Commission with some suggested Zoning changes that will be discussed at an upcoming Planning Commission meeting. The suggestion includes some rezoning in the Lakeside area to allow for certain marihuana license types. The current zoning in that area does not allow for most of these types of businesses.

Public Comment – No public comments were received.

Adjournment – The Worksession meeting adjourned at 8:36 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 14, 2021 @ 5:30 P.M.
MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, September 14, 2021, Mr. George Munroe, Evanston Avenue Baptist Church, opened the meeting with a prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood (arrived at 5:36), Commissioners Ken Johnson, Dan Rinsema-Sybenga, and Teresa Emory, City Manager – Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioners Willie German and Michael Ramsey

PUBLIC COMMENT ON AGENDA ITEMS: Public comments were received.

2021-84 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the August 24, 2021 Regular Meeting.

STAFF RECOMMENDATION: To approve the minutes.

B. Financing 100-Foot Mid Mount Tower Ladder Truck Finance

SUMMARY OF REQUEST: At this time, we are seeking authorization to enter into a lease agreement with Team Financial for the purchase of a 100-foot Mid Mount Tower Ladder Truck.

At the August 10, 2021 City Commission meeting the Commission voted to purchase two Fire Trucks. By the end of September, the 100-foot Mid Mount Tower Ladder Truck will be ready to purchase for $1,370,873. At this time, we are seeking authorization to enter into a lease agreement with Team Financial. The proposed terms are for a five -year lease at 1.78% interest rate with the City purchasing the truck at the end of the lease for $1. There is a one-time $500.00 processing fee.

AMOUNT REQUESTED: $1,370,873.00

AMOUNT BUDGETED: $286,740.00 for 5 years

FUND OR ACCOUT: General – 101-50336-5700

STAFF RECOMMENDATION: To approve the lease agreement with Team Financial.

C. Increase in General Fund Transfer to Mercy Health Arena and the Public Service Building Finance

SUMMARY OF REQUEST: The Mercy Health Arena fund and the Public Service Building fund require a larger transfer from the General fund then what was budgeted to prevent a deficit. Mercy Health Arena needs an additional $25,000 transferred from the General Fund and the Public Service Building needs an additional $425,000 transferred from the General Fund.

Based on financial results for the fiscal year end June 30, 2021 the Mercy Health Arena and the Public Service Building fund required a larger transfer from the General Fund then what was budgeted in the 4th quarter reforecast, to prevent a fund deficit. The Mercy Health Arena fund needs to be increased from $700,000 to $725,000 and the Public Service Building fund needs to be increased from $200,000 to $625,000.

AMOUNT REQUESTED: $1,350,000 AMOUNT BUDGETED: $900,000

FUND OR ACCOUNT: 101, 254, 642

STAFF RECOMMENDATION: To approve the increase to the General Fund transfers for the Mercy Health Arena to $725,000 and the Public Service Building to $625,000.

D. Western Avenue ADA Work Public Works

SUMMARY OF REQUEST: Staff is requesting authorization to partner on several projects along Western Avenue to improve the ADA Access throughout the corridor.

The City Commission allocated $200,000 towards ADA work in the FY 21/22 budget as shown in line 101-91116. City staff is proposing a series of partnerships along Western Avenue to enhance the accessibility and pedestrian experience along the corridor.

Frauenthal

The Frauenthal is underway installing a snow melt system on the sidewalk in front of the Frauenthal and the Hilt Building as a part of their capital project which also includes replacing the ceiling of the Hilt Building basement which is under the sidewalk. The snowmelt system will be installed, operated and maintained by the Frauenthal at no cost to the City. Staff is seeking permission to allocate $120,000 towards the cost of removing and replacing the existing sidewalk in partnership on the project.

Staff is seeking to utilize the remaining $80,000 towards two projects along Western Avenue and possibly supplement with additional Major Street dollars if necessary. An exact split between these two is yet to be determined.

3rd – 4th Block (West Half)

This project will involve removal of several parallel parking spaces along Western Avenue and widening the sidewalk. Instead of a barrier curb a gutter will be placed along the edge of the roadway allowing for the area formerly used by the parallel parking spaces to be either used as additional pedestrian space and/or parallel parking spaces. This is a half-block long model similar to what the City of Detroit completed on Bagley Street - https://detroit.curbed.com/2020/1/16/21068713/bagley-street-mexicantown-detroit-shared-street The goal is to create a barrier free interface from building face to building face that can be used as the situation dictates. This would be a trial concept to prove the notion for later use on a large scale.

1st – 2nd Block (West Half / North Side)

This project would be a partnership with the Leonard to eliminate several angle parking spaces on Western in front of the Leonard, and several parallel spaces along 2nd Street adjacent to The Leonard. The goal of this project would be to offer increased pedestrian and plaza space for use as social district space, and/or in conjunction with a future restaurant type operation located on the ground floor of The Leonard.

In all of these projects the split of this $200,000 may not fully fund the project and additional funds may be required. This proposal is just the first step in funding each of these projects.

AMOUNT REQUESTED: $200,000 AMOUNT BUDGETED: $200,000

FUND OR ACCOUNT: 101-91116

STAFF RECOMMENDATION: Authorize staff to utilize the $200,000 allocation for ADA Projects in partnership with multiple projects along Western Avenue.

E. Extension of CHOP Contract Public Works

SUMMARY OF REQUEST: Staff is requesting authorization to extend an existing contract with CHOP Tree Service during Fiscal Year 21/22 in the amount of $75,000 for As-Needed Forestry Services.

The City Commission allocated $75,000 towards Contractual Forestry Work under line 101-70771-5300 in the 21/22 Fiscal Year. Staff is requesting authorization to extend our existing contract with CHOP, Inc. who was the low bidder selected for the same work during the 20/21 Fiscal Year. CHOP, Inc. has been a great contractor and helped partner with us successfully complete several forestry projects during the previous fiscal year.

Staff has previously utilized CHOP for work outside of the road right-of-way when performing tree work on development projects, and for large scale projects where CHOP can provide increased resources to address large projects (Lakeside Cemetery & Musketawa Trail).

Staff is requesting to award the $75,000 budgeted to CHOP as an extension for the 21/22 Fiscal Year and not repost the work for competitive bids. During the previous bidding cycle CHOP was the only bid accepted. A copy of the bid sheet submitted during the 20/21 open competitive bidding is provided for reference.

AMOUNT REQUESTED: $75,000 AMOUNT BUDGETED: $75,000

FUND OR ACCOUNT: 101-70771-5300

STAFF RECOMMENDATION: Authorize staff to extend the existing contract with CHOP Tree Service in the amount of $75,000 for completion during the 21/22 Fiscal Year.

F. Laketon Trail Lighting Public Works

SUMMARY OF REQUEST: Staff is requesting authorization to award a contract to J&J Electrical LLC for the construction of lights along a portion of the Laketon Trail.

Staff solicited bids for a project to install trail lighting on a portion of the Laketon Trail between Peck and 7th Street. This area is located within the marihuana district and the existing street lights along Laketon Avenue are all on the south side of the street, across from the path leading to less than desirable lighting levels along the pathway in particular at the street crossings. Bids were received on August 24, 2021 with the low bid coming from J&J in the amount of $94,037.00.

Staff has not worked with J&J previously and conducted a meeting with them on August 30, 2021 to assess their understanding of the project and gauge their ability to complete the work. It is the opinion of staff that J&J fully understands the project and is appropriately positioned to complete the work as outlined.

The original bid did not include the installation of receptacles on the poles. As such staff requested a price to add this into the project which wat quoted at $7,379.00. Adding this amount to the original bid creates a proposed contract cost of $101,416 which is still below the 2nd lowest bidder.

The funding for this project is derived from the Marihuana Business Fees collected. Business are required to install decorative lighting on their site or make a donation to the city to install lighting elsewhere. In 20/21 the City collected $66,965 from this fee with anticipation of collecting an additional $30,000 during the current fiscal year. Staff felt that the use of the lighting on the path in the marijuana district improved an existing problem and also focused those dollars back to the primary area that generated the revenue. The project will need to be included in a future reforecast of the budget if approved.

J&J Electrical LLC is located within the City of Muskegon.

AMOUNT REQUESTED: $101,416.00 AMOUNT BUDGETED: $0

FUND OR ACCOUNT: 101

STAFF RECOMMENDATION: Authorize staff to approve a contract with J&J Electrical LLC in the amount of $101,416.00 for the construction of a pedestrian lighting system along the Laketon Avenue Trail between Peck and 7th.

G. <u>Police Cruiser Replacement</u> Public Works

SUMMARY OF REQUEST: The Equipment Division is requesting permission to purchase three (3) Chevy Tahoes to replace existing vehicles in the Police Department fleet.

Tahoes will be purchased from Berger Chevrolet, the Mi-Deal contract holder. The price of this vehicle is $38,836.00 each for a total price of $116,508.00 coming from the Equipment budget. These vehicles were budgeted for replacement in the 21/22 budget.

AMOUNT REQUESTED: $116,508 AMOUNT BUDGETED: $117,000

FUND OR ACCOUNT: Equipment

STAFF RECOMMENDATION: Authorize staff to purchase three (3) Chevy Tahoes replacement vehicles for Police Department.

H. Special Event Fee Waiver Form Public Works

SUMMARY OF REQUEST: To amend the current Special Event Fee Waiver Form to allow some fees to be waived at the staff level.

This is the same application that was presented at the July Work Session. Event fees under $2,500 would be eligible to be waived at various percentages based on the answers to the questions on the form. Fees over $2,500 will still go before the Commission.

STAFF RECOMMENDATION: Approve the revisions to the Special Event Fee Waiver Application for events scheduled in 2022 and authorize staff to waive fees for events scheduled in 2022 and authorize staff to waive fees per the stated requirements when less than $2,500.

I. Sanford Street and Glenside Phase 2 Engineering Assistance Public Works

SUMMARY OF REQUEST: Staff is requesting authorization to approve the Professional Services Agreement with Prein & Newhof to provide comprehensive engineering services for the design of water and sewer projects schedule for construction in 2023 and planned for financing within the state revolving loan fund programs during state fiscal year 2022.

Staff is planning to pursue two (2) primary water/sewer projects as a part of the State of Michigan Revolving Loan programs (DWRF/SRF) during the State 2022 Fiscal Year. These projects would be constructed during 2023.

Sanford Street

This is the last phase of a three-phase project of which Prein & Newhof has completed the prior two phases. The first was completed in 2020 and included work on several alleys in additional to work on Jefferson and Strong. The second was completed in 2021 and included work on Peck Street. This project will include complete water/sewer upgrades on Sanford from Merrill south to Laketon. In addition, staff is proposing to fund the remainder of Sanford Street north to Apple as ineligible (SRF/DWRF) expense. The project will include a substantial reduction in the width of Sanford Street (40 Ft – 27 Ft) and is proposed to replace one of the sidewalks with a bike path that will connect from the Laketon to Lakeshore Trails.

Glenside Phase 2

The first phase of this project was completed in 2020 and included work on Westwood Street. This project will be focused on Hadden Street which will allow for the eventual abandonment of the utilities in the non-existent alley between Westwood and Hadden.

Both projects are budgeted in the 21/22 budgets and will also have allocations included in the future 22/23 and 23/24 fiscal years. The two projects represent an approximately $8.5M Investment of which nearly $2.5M will be forgiven through the loan program based on our qualification as a disadvantaged community.

AMOUNT REQUESTED: $862,300 (FY 21/22, 22/23, & 23/24)

AMOUNT BUDGETED: $400,000 (FY 21/22)

FUND OR ACCOUNT: 202/590/591

STAFF RECOMMENDATION: Authorize staff to sign the professional services agreement with Prein & Newhof to provide Engineering Services for the water, sewer, road, and bike path projects on Sanford Avenue and Glenside Phase 2.

J. Bulk Sticker Fee Adjustment Public Works

SUMMARY OF REQUEST: Staff is requesting Commission approval to adjust the user fee for Bulk Item stickers from the current rate of $2/EA or 6 for $10 to a new proposed rate of $3/EA and 4 for $10.

Staff is planning to increase the user fee for bulk item stickers and begin to offer free bags with the purchase of a sticker. Residents purchasing a sticker would be able to take one bag per sticker. Two bag options would be provided; a heavy duty 60-gallon bag for miscellaneous items; or a larger thin bag for wrapping a mattress. The hope is this program will save someone from having to make separate stop to purchase bags and stickers and make it into a single stop operation.

STAFF RECOMMENDATION: Authorize a change to the Bulk Item Sticker pricing in the user fee schedule to $3 per each or 4 each for $10.

K. Amendment to the Floodplain Management Ordinance Planning

SUMMARY OF REQUEST: Staff-initiated request to amend Sections 26-401 through 26-405 of the City Code of Ordinances to adopt the new Flood Insurance Rate Map panels from the National Flood Insurance Program.

The only change is to the Flood Insurance Rate Map panels listed in Section 26-403.

STAFF RECOMMENDATION: To approve the request to amend Sections 26-401 through 26-405 of the City Code of Ordinances to adopt the new Flood Insurance Rate Map panels from the National Flood Insurance Program.

L. <u>Sale – 239 Monroe Avenue</u> Planning

SUMMARY OF REQUEST: City staff is seeking authorization to sell the City-owned home at 239 Monroe Ave. to Dakota J. Crow and Annah Crow.

The city constructed this house as part of the phase two of our infill housing program. Our contract to construct the home was $164,470. We also anticipated $11,512 in sales commissions. There are additional costs $7,286.12 (switching the range from electric to gas, changing laminate counter tops in the kitchen from solid to surface, discount kitchen sink, hook up new single-bowl undermount sink & permits, fees, dumpster.) The accepted purchase price is $177,900.

STAFF RECOMMENDATION: Authorize the Code Coordinator to complete the sale of 239 Monroe Ave, as described in the attached purchase agreement and to have the Mayor and Clerk sign the deed.

M. <u>ARP Infill Housing Program</u> City Manager

SUMMARY OF REQUEST: City staff has developed and released a Request for Qualifications for homebuilders to participate in our ARP Infill Housing Program. We received a total of four responses.

Staff is recommending that all four builders be selected to submit formal proposals to construct homes as part of the ARP Infill Housing Program. LRS Enterprises submitted to construct five homes; William Construction submitted to construct six homes; Kramer Builders submitted to construct three homes, and West Urban Properties submitted to construct the full $5Million program. We are using a rough estimate of $250,000 per home, but the actual costs will be determined as the builders bid their specific projects with their subcontractors. The breakdown will look something like this:

Builder/Developer	City ARP Funds	Developer Funds
LRS Enterprises	$750,000	$750,000
Williams Construction	$750,000	$750,000
Kramer Builders	$250,000	$250,000

West Urban Properties	$3,250,000	$3,250,000

STAFF RECOMMENDATION: Authorize staff to work directly with the following qualified builders: LRS Enterprises, Williams Construction, Kramer Builders, and West Urban Properties to submit formal construction proposals to build a minimum of 40 new single-family homes as part of the ARP Infill Housing Program at a cost not to exceed $5 Million.

N. Arena Buildout – Carlisle's City Manager

SUMMARY OF REQUEST: Carlisle's restaurant is officially moving forward at Mercy Health Arena. Staff is seeking approval to perform the construction activities.

After more than two years of planning, we have started demolition of the front entryway at the arena to accommodate the facility's newest restaurant. There are a number of logistics related to the construction timing that is resulting in a logical path forward that includes the City managing the construction project and timeline.

There are a number of key milestones that we must hit, including the two greatest issues: Moving doors for the opening of the hockey season in October, and building in compliance with our liquor license. Our lease with Carlisle's calls for them to begin construction after the DDA liquor license is secured – that may take much of October and is not acceptable to the Lumberjacks. To expedite the process, the Arena is seeking to undertake and manage the construction efforts. We would enter into the construction contract with Platinum Construction (Carlisle's contractor). Carlisle's ownership group would then pay us in full once construction is complete. Note that we have their bank approval letter, and their financing is already set. The buildout will take 8-10 weeks at an estimated cost of $647,202.49.

AMOUNT REQUESTED: $647,202.49 AMOUNT BUDGETED: $0

FUND OR ACCOUNT: Arena Fund

STAFF RECOMMENDATION: Approve the expenditure of $647,202.49 for the construction of Carlisle's and amend the budget accordingly to account for both the expenditure and the reimbursement in the Arena Fund.

O. Sale – 766 Leonard Economic Development

SUMMARY OF REQUEST: City staff is seeking authorization to sell the city-owned home at 766 Leonard in Jackson Hill to Brittany Dlynn Brown.

The City is constructing this single family detached home as part of our infill housing program. Our contract to construct two homes was for $425,000, and the estimated finished costs of this home will be $215,000. We also anticipated $12,900 in sales commissions. The accepted purchase price is $200,000, and the incurred sales commissions are $10,000. The City will not contribute funds toward closing costs outside of the seller's agent commission. The proceeds of this home will repay a portion of the Priority Related Investment made by the Community Foundation for Muskegon County. The sale of the second home in this project should repay the remainder, and any additional funds will reimburse the Economic Development Fund for the $75,000 in the project.

STAFF RECOMMENDATION: Authorize the City Manager to complete the sale of 766 Leonard Street, as described in the purchase agreement.

P. <u>Community Relations Committee Recommendations</u> City Clerk

SUMMARY OF REQUEST: To appoint Emilio Trejo to the Historic District Commission.

The CRC recommends appointing Emilio Trejo to the vacant position on the Historic District Commission – Term expiring 01/31/2022.

STAFF RECOMMENDATION: To concur with the recommendation of the CRC on the appointment.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to accept the consent agenda as presented.

ROLL VOTE: Ayes: Gawron, Rinsema-Sybenga, Emory, and Johnson

Nays: None

MOTION PASSES

2021-85 PUBLIC HEARINGS:

A. <u>2020 Consolidated Annual Performance Evaluation Report (CAPER) Hearing</u> Community and Neighborhood Services

SUMMARY OF REQUEST: The CAPER is available on our website for citizen review and comment period of 20 days from September 5 -25, 2021. A public Hearing is another opportunity to comment about the Federal CDBG and HOME program activities performed during the fiscal year 2020 (July 1, 2020 - June 30, 2021).

Citizen input is a necessary process of program activities for the CDBG/HOME annual allocations. The 2020 CAPER is another opportunity to comment on the performance achievements of the annual projects during the Hearing.

STAFF RECOMMENDATION: To conduct a Public Hearing for the 2020 CAPER review.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to close the public hearing.

ROLL VOTE: Ayes: Hood, Rinsema-Sybenga, Emory, Johnson, and Gawron

Nays: None

MOTION PASSES

B. <u>Issuance of a Commercial Facilities Exemption Certificate – 441 W. Western Avenue</u> Planning

SUMMARY OF REQUEST: Pursuant to Public Act 255 of 1978, as amended, PH Holdings LLC (Pigeon Hill Brewing) has requested the issuance of a Commercial Facilities Exemption Certificate. The certificate will freeze the taxable value of the building and exempt the new real property investment from local taxes. The company will be investing $650,000 in upgrades to the building and will create up to 30 new jobs, which qualifies them for an abatement of four (4) years.

STAFF RECOMMENDATION: To (approve/deny) the request for a Commercial Facilities Exemption Certificate for a period of four (4) years.

PUBLIC HEARING COMMENCED: Joel Kamp, owner, spoke about the project.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to close the public hearing and approve the request for a Commercial Facilities Exemption Certificate for eight (8) years.

<u>**Motion to Amend:**</u> **Motion by Commissioner Johnson, second by Commissioner Emory, to amend the previous motion to reflect the duration of ten years for the Commercial Facilities Exemption Certification.**

<u>**Vote on Motion to Amend:**</u>

ROLL VOTE: Ayes: Rinsema-Sybenga, Emory, Johnson, and Gawron

Nays: Hood

MOTION PASSES

<u>**Vote on Original Motion with Amendment:**</u>

ROLL VOTE: Ayes: Rinsema-Sybenga, Emory, Johnson, and Gawron

Nays: Hood

MOTION PASSES

C. <u>Issuance of a Commercial Facilities Exemption Certificate (New Facility) – 639 W Clay Avenue</u> Planning

SUMMARY OF REQUEST: Pursuant to Public Act 255 of 1978, as amended, Indigrow LLC has requested the issuance of a New Facility Commercial Facilities Exemption Certificate. The certificate will reduce the taxable value of the building. The company will be investing $1,133,351 into the new building addition and will create up to 30 new jobs, which qualifies them for an abatement of 8 years.

This will be an addition to the current building at 639 W Clay Avenue. The new building will receive its own tax abatement and the rehab to the existing building will receive its own tax abatement. This will decrease the amount of tax revenue abated than it would by granting one abatement on the entire project.

STAFF RECOMMENDATION: To (approve/deny) the request for a New Facility Commercial Facilities Exemption Certificate for a period of eight years.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to close the public hearing and approve the request for a New Facility Commercial Facilities Exemption Certificate for a period of eight years.

ROLL VOTE: Ayes: Rinsema-Sybenga, Emory, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

D. <u>Issuance of a Commercial Facilities Exemption Certificate (Restored Facility) – 639 W Clay Avenue</u> Planning

SUMMARY OF REQUEST: Pursuant to Public Act 255 of 1978, as amended, Indigrow LLC has requested the issuance of a Restored Facility Commercial facilities Exemption Certificate. The certificate will freeze the taxable value of the building and exempt the new real property investment from local taxes. The company will be investing $1,218,561 into restoring the existing building and will create up to 30 new jobs, which qualifies them for an abatement of 8 years.

This will be for the restoration of the existing building at 639 W Clay Avenue. The new building will receive its own tax abatement and the rehab to the existing building will receive its own tax abatement. This will decrease the amount of tax revenue abated than it would by granting one abatement on the entire project.

STAFF RECOMMENDATION: To (approve/deny) the request for a Restored Facility Commercial Facilities Exemption Certificate for a period of eight years.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Emory, to close the public hearing and approve the request for a Restored Facility Commercial Facilities Exemption Certificate for a period of eight years.

ROLL VOTE: Ayes: Emory, Johnson, Gawron, Hood, and Rinsema-Sybenga

Nays: None

MOTION PASSES

E. <u>Camcar Plastics IFT Public Hearing</u> Economic Development

SUMMARY OF REQUEST: Camcar Plastics has requested an Industrial Facilities Tax Abatement for a small new construction addition to their shipping and receiving department at their Glade Street location.

The Tax Incentive Committee has utilized the new Tax Incentive Policy approved by the City Commission to score and make recommendations on several incentive applications recently. Camcar has been working with the division to apply for a Public Act 198 Industrial Facilities Exemption for an 800 square foot expansion to their current facility at 1732 Glade Street. The incentive allowed an eligible entity to apply for a 50% cut in their real property tax liability for up to 12 years, as approved by the local unit of government. The applicant has applied for the full 12-year abatement.

Based on the new policy, due to the taxable value being created ($72,000), the number of permanent jobs created (3), the Tax Incentive Committee's scoring system dictates a recommendation of 9 years of abatement as opposed to the maximum of 12.

STAFF RECOMMENDATION: To close the Public Hearing and approve the Industrial Facilities Exemption application for Camcar Plastics for a term of nine (9) years.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to close the public hearing and approve the Industrial Facilities Exemption application for Camcar Plastics for a term of nine (9) years.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, Rinsema-Sybenga, and Emory

Nays: None

MOTION PASSES

F. Sun Dolphin Drive Industrial Space IFT Transfer Public Hearing Economic Development

SUMMARY OF REQUEST: InSite Real Estate LLC has requested the transfer of an existing Industrial Facilities Tax Abatement for industrial real property they have acquired at 1790 Sun Dolphin Drive.

The new owners of these facilities are leasing them back to the new operators of KL Outdoor, and the facilities onsite are one of several operated locally in the injection molding company's portfolio. InSite is currently not listed the listed owner of the building on the existing Industrial Facilities Exemption and so they must request a transfer of termination of the incentive. Naturally, they opted for a request to transfer the real property exemption, which is scheduled to terminate December 30, 2026.

The new ownership has recently paid some back property taxes and is eligible to request said transfer.

STAFF RECOMMENDATION: A motion to close the Public Hearing and approve the Industrial Facilities Exemption Transfer for IIP Muskegon, MI (1790 and 1880 Sun Dolphin) LLC as presented.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to close the public hearing and approve the Industrial Facilities Exemption Transfer for IIP Muskegon, MI (1790 and 1880 Sun Dolphin) LLC as presented.

ROLL VOTE: Ayes: Gawron, Hood, Rinsema-Sybenga, Emory, and Johnson

Nays: None

MOTION PASSES

G. Trace Analytical IFT Public Hearing Economic Development

SUMMARY OF REQUEST: Trace Analytical has requested an Industrial Facilities Tax Abatement for an 8,000 square foot addition to their location at 2241 Black Creek Road, which would support 18 new employees over the next several years.

The Tax Incentive Committee has utilized the new Tax Incentive Policy approved by the City Commission to score and make recommendations on several incentive applications recently. Trace Analytical Labs has been working with the division to apply for a Public Act 198 Industrial Facilities Exemption for an 8000 square foot expansion to their current facility at 2241 Black Creek Road. The incentive allows an eligible entity to apply for a 50% cut in their real property tax liability for up to 12 years, as approve by the local unit of government. The applicant has applied for the full 12-year abatement.

Based on the new policy, due the taxable value being created ($600,000), the number of permanent jobs created (18), the Tax Incentive Committee's scoring system dictates a recommendation of 9 years of abatement as opposed to the maximum of 12.

STAFF RECOMMENDATION: A motion to close the Public Hearing and approve the Industrial Facilities Exemption application for Trace Analytical Labs for a term of nine (9) years.

PUBLIC HEARING COMMENCED: Brad Hilleary, from Trace Analytical Labs, spoke.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Emory, to close the public hearing and approve the Industrial Facilities Exemption Application for Trace Analytical Labs for a term of nine (9) years.

ROLL VOTE: Ayes: Hood, Rinsema-Sybenga, Emory, Johnson, and Gawron

Nays: None

MOTION PASSES

PUBLIC COMMENT ON NON-AGENDA ITEMS: Public comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 7:37 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 28, 2021 @ 5:30 P.M.

MUSKEGON CITY COMMISSION CHAMBERS

933 TERRACE STREET, MUSKEGON, MI 49440

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, September 28, 2021, Commissioner Willie German, Jr., opened the meeting with a prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Ken Johnson, Dan Rinsema-Sybenga, Willie German, Jr., Michael Ramsey, and Teresa Emory, City Manager – Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

PUBLIC COMMENT ON AGENDA ITEMS: Public comments were received.

HONORS, AWARDS, AND PRESENTATIONS:

A. Senior Power of Produce Volunteer Recognition

Several people from the Senior Power of Produce program were recognized for being excellent volunteers. The Senior Power of Produce program provided $93,000 in produce to area seniors. The program is made possible by the Lions Club, the City of Muskegon, and Senior Resources Senior Millage dollars. The Senior Power of Produce served between 1100 and 1400 seniors each Tuesday for ten weeks this summer.

2021-86 CONSENT AGENDA:

A. Approval of Minutes City Clerk

REMOVED PER STAFF REQUEST

C. Aquarium Feasibility Study Economic Development

SUMMARY OF REQUEST: Staff is requesting authorization to commit funds of the City to be included in a Feasibility Study as one of two potential locations for the construction of an aquarium facility in the West Michigan region. The Feasibility Study would be coordinated by the John Ball Zoo (JBZ) in Grand Rapids and conducted by Zoo Advisors, Inc.

The JBZ is currently exploring the viability of building a large scale aquarium in the West Michigan area to compete with similar major marine attractions across the United States. Staff initiated contact with JBZ officials earlier this Spring to assess the impact of locating this pivotal tourist destination within the City. The City is an established tourism and cultural destination throughout the region and is supported by area educational and Great lakes environmental throughout the region and is supported by area educational and Great Lakes environmental research institutions. Exploring the potential of adding a conservation, research and community education aquatic asset to our lakeshore community could realize greater social resiliency and further catapult our local and regional economy's as a premier national tourism destination. The City continues to reclaim its former industrial waterfront for a mix of uses designed to enhance public waterfront access and further connect to our vibrant downtown and other recreational activities.

Four phases of the 9-12 month Feasibility Study process would include Concept Development (2-3mo), Preliminary Research Study (3-4mo), Project Modeling (2-3mo), and Economic Impact (2mo). Results of the Study would further develop the aquarium concept, assess the operational feasibility of locations in the City of Muskegon and Kent County, establish attendance estimates, project preliminary capital investment of construction, and develop economic impacts associated with construction and operation of the facility in both potential locations. JBZ has proposed a cost-sharing arrangement for the total cost of the $227,585 Study. One-third of the fee would be paid by the City of Muskegon, one-third by Kent County, and the remainder by JBZ.

Based on estimates of a 2018 JBZ Feasibility Study, a $150M aquarium investment would, at minimum, result in a $100M impact on the regional economies.

According to their website, Zoo Advisors is a full-service planning and consulting firm focused on helping zoos, aquariums, and conservation organizations advance their missions, increase impact, and grow sustainability.

The expense will need to be included in a future reforecast of the budget if approved.

AMOUNT REQUESTED: $75,000 AMOUNT BUDGETED: $0

FUND OR ACCOUNT: TBD

STAFF RECOMMENDATION: To authorize the commitment of funds to include the City of Muskegon in a Feasibility Study as a potential location for the construction of an aquarium facility in the West Michigan region.

D. Reassignment of Building Contracts for 769 Catawba Avenue and 548 E Dale Avenue CNS

SUMMARY OF REQUEST: To award the Building Contracts of the rehabilitation of 769 Catawba Avenue and 548 E. Dale Avenue to Nassau Construction for the City of Muskegon's Homebuyers Program.

Both contracts were previously awarded to Mike Murphy, Custom Exteriors, LLC. Unfortunately, Mr. Murphy is not able to fulfill his contract to rehabilitate 769 Catawba Avenue and 548 E Dale Avenue.

CNS is requesting that the 2 rehabilitation projects be awarded to the second bidder – Nassau Construction;

Nassau Construction is a MBE (Minority Business Enterprise) and WBE (Woman-owned Business Enterprise) with a history of working with the city since 2018 for our Homebuyers, Lead Safe Muskegon and Muskegon County Senior Millage programs.

AMOUNT REQUESTED: $91,910 – Catawba Avenue

$81,231 – Dale Avenue

AMOUNT BUDGETED: $220,000

FUND OR ACCOUNT: HOME Program

STAFF RECOMMENDATION: To award Nassau Construction the rehabilitation contracts for 769 Catawba Avenue and 548 E Dale Avenue.

E. <u>Alley Paving Policy</u> Public Works

SUMMARY OF REQUEST: Staff is requesting approval of the Alley Paving Policy effective for the 2022 Calendar Year.

The draft Alley Paving policy was discussed at the September 13, 2021 Worksession Meeting. Minor adjustments to the draft policy were made to clarify the difference between “Residential” and “Non-Residential” parcels.

STAFF RECOMMENDATION: To approve the Alley Paving Policy.

H. <u>Water Filtration Plant Fencing – Change Order #001</u> Public Works

SUMMARY OF REQUEST: Staff is seeking approval of a change order with Fence Consultants for $23,260.35 for the fending project at the Water Filtration Plant. This change order includes the use of Ultra Aluminum fencing in place of the originally proposed black vinyl coated chain link fencing.

The City Commission previously approved a proposal from Fence Consultants to replace the Water Filtration Plant fencing on the east side of the plant property. The project included the replacement of the existing chain link fencing with black vinyl coated chain link fencing.

Upon further discussion with city staff, it was decided to investigate the cost of using decorative aluminum fencing that would match the existing fencing on the west side of the Water Filtration Plant. City staff is now recommending that Ultra Aluminum fencing be used instead of the originally proposed black vinyl coated chain link fencing. This upgrade will improve the appearance along the east side of the plant and provide continuity with the existing fencing that was upgraded 2018.

AMOUNT REQUESTED: $19,219.44 AMOUNT BUDGETED: $0

FUND OR ACCOUNT: 591-92034-5346

STAFF RECOMMENDATION: Authorize staff to approve the change order from Fence Consultants for $23,260.35 for the replacement of the fencing and gate on the east side of the Water Filtration Plant property with Ultra Aluminum Fencing.

I. Administrative Vehicle Replacement Public Works

SUMMARY OF REQUEST: The Equipment Division is requesting permission to purchase two Chevy Blaser's from Berger Chevrolet the State Mi-Deal contract holder. The price of this vehicle is $32,936.00 each for a total price of $64,872.00 coming from the Equipment budget.

AMOUNT REQUESTED: $64,872.00 AMOUNT BUDGETED: $85,000

STAFF RECOMMENDATION: Authorize staff to move forward with the purchase.

J. Temporary Art Installation, 1095 Third Economic Development

SUMMARY OF REQUEST: The City Commission is asked to approve the use of the exterior of the city-owned, former Catholic Social Services building for a temporary photo exhibit through the end of the year.

Local photographer Patrick Thompson of Pat ApPaul Photography has requested to use the exterior of the city-owned, former Catholic Social Services building at 1065 Third to present The Stand phot exhibition through the end of the year. The city is seeking a new owner to redevelop the office building in Midtown. The current exterior will be removed. The exhibit will be taken down if a new owner needs the exterior before the end of the year. The Lemonade Stand of Muskegon is a residential home in the heart of downtown and Nelson Neighborhood supporting those with mental health and addiction issues. Thompson visually captured The Stand in a work that has been published in a book and in a multi-media presentation. The Stand images would be temporarily attached to the outside of the building along Third Street for public viewing.

STAFF RECOMMENDATION: To authorize Patrick Thompson of Pat ApPaul Photography in Muskegon to use the exterior of 1095 Third for The Stand Photo Exhibition through the end of 2021 or the building is needed by a new owner for redevelopment.

K. West Urban ARP Development Agreement City Manager

REMOVED PER STAFF REQUEST

L. Holiday Lights on Western Avenue City Clerk

SUMMARY OF REQUEST: Terry Puffer has approached the City with a commitment to raise $30,000 to decorate the downtown with colorful lights. It's a program he would like to add to each year. We have reached out to Lakeshore Aquascape who can do the decorating. They need to start in two weeks and require half down.

Terry Puffer is working to secure $15,000 in sponsors to get the project going. Once he does, we are asking permission to sign an agreement with Lakeshore Aquascape in the amount of $30,000. If Mr. Puffer is not able to secure the additional $15,000, the city will need to pay that amount from its PR fund.

AMOUNT REQUESTED: Up to $15,000 AMOUNT BUDGETED: $0

FUND OR ACCOUNT: Public Relations

STAFF RECOMMENDATION: To authorize the Clerk to sign an agreement for $30,000 in holiday lighting with Lakeshore Aquascape once the $15,000 in donations are secured.

M. <u>Shoreline Tram Transfer</u> City Clerk

SUMMARY OF REQUEST: We are seeking approval to accept the gift of an 18-seat Tran, being gifted by Ramos Towing. Acceptance of the gift will allow the City to add the vehicle to the City's insurance. Ramos Towing donates hundreds of hours, paying their staff to run the Shoreline Tram for City events at no charge while paying $1,000 per month in insurance costs.

STAFF RECOMMENDATION: To authorize the City Clerk to sign the Gift Agreement for Shoreline Tram gifted by Ramos Towing.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Ramsey, to accept the consent agenda as presented minus items B, F, and G.

ROLL VOTE: Ayes: Gawron, Hood, Ramsey, German, Rinsema-Sybenga, and Johnson

Nays: None

Absent: Emory

MOTION PASSES

2021-87 REMOVED FROM CONSENT AGENDA:

B. <u>Solid Waste Ordinance Amendment</u> City Manager

SUMMARY OF REQUEST: Staff is seeking approval of an amendment to Chapter 70, Article II of the Code of Ordinances in coordination with the revised Sanitation Policy.

The newly adopted Sanitation Policy includes revised times when refuse collection carts can be placed at the curb and restricts where the carts can be stored. Staff is seeking a change to the Solid Waste ordinance to match the new standards.

STAFF RECOMMENDATION: To amend and adopt Chapter 70, Article II, Section 31 (a) of the Code of Ordinances for Solid Waste.

Motion by Commissioner Johnson, second by Commissioner German, to amend and adopt Chapter 70, Article II, Section 31(a) of the Code of Ordinance for Solid Waste.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to amend the motion and have the ordinance language read "Mixed refuse collection carts shall be removed by the owner and occupant of the residential unit not later than 7:00 a.m. of the day after the collection day and stored in a discrete location.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Ramsey to table this item

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Emory, Johnson, Gawron, Hood, and Ramsey

Nays: None

MOTION PASSES

F. <u>Deer Hunting Ordinance Amendment</u> Public Works

SUMMARY OF REQUEST: Staff is requesting approval of an amendment to Chapter 6 of the Code of Ordinances to incorporate the new Section 6-19 which provides for limited archery hunting options within the City of Muskegon.

The draft Archery Hunting ordinance was discussed at the September 13, 2021 Commission Work Session meeting. No revisions have been made to the draft ordinance that was presented at that meeting.

STAFF RECOMMENDATION: To amend Chapter 6 of the City Code of Ordinances with the addition of Section 19.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to amend Chapter 6 of the City Code of Ordinances with the addition of Section 19.

ROLL VOTE: Ayes: Rinsema-Sybenga

Nays: Emory, Johnson, Gawron, Hood, Ramsey, and German

MOTION FAILS

G. <u>Traffic Control Order #71</u> Public Works

SUMMARY OF REQUEST: Staff is requesting approval of Traffic Control Order #71-(2021) for the installation of "Yield Signs" at East and West bound Ada Avenue at Williams Street.

STAFF RECOMMENDATION: To approve Traffic Control Order #71-(2021).

Motion by Commissioner German, second by Commissioner Rinsema-Sybenga, to approve Traffic Control Order #71-(2021).

ROLL VOTE: Ayes: Emory, Johnson, Gawron, Hood, Ramsey, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

2021-88 UNFINISHED BUSINESS:

A. Amendment to the Floodplain Management Ordinance – SECOND READING Planning

SUMMARY OF REQUEST: Staff-initiated request to amend Sections 26-401 through 26-405 of the City Code of Ordinances to adopt the new Flood Insurance Rate Map panels from the National Flood Insurance Program.

The only change is to the Flood Insurance Rate map panels listed in Section 25-403.

STAFF RECOMMENDATION: To approve the request to amend Sections 26-401 through 26-405 of the City Code of Ordinances to adopt the new Flood Insurance Rate Map panels from the National Flood Insurance Program.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to approve the request to amend Section 26-401 through 26-405 of the City Code of Ordinances to adopt the new Flood Insurance Rate Map panels from the National Flood Insurance Program.

ROLL VOTE: Ayes: Johnson, Gawron, Good, Ramsey, German, Rinsema-Sybenga, and Emory

Nays: None

MOTION PASSES

B. Rezoning of 1128 Roberts – TABLED on August 24, 2021 Planning

SUMMARY OF REQUEST: Request to rezone the property at 1128 Roberts Street from R-1 Single-Family Residential Low Density to MC Medical Care, by Fresh Coast Alliance.

The Planning Commissioner unanimously (8-0, one absent) recommended approval of the rezoning and also unanimously approved the special use permit, contingent upon the rezoning approval by the City Commission.

The case was tabled at the July 27 City Commission meeting. The Commission requested to prepare a separate agreement that would limit intensive medical zoning uses at the location. A proposed Conditional Zoning Agreement is provided.

This item was removed from the table on August 24, 2021 for further discussion and was then tabled until September 28, 2021.

STAFF RECOMMENDATION: To (approve/deny) the request to rezone the property at 1128 Roberts Street from R-1 Single-Family Residential Low Density to MC Medical Care.

Motion by Commissioner Ramsey, second by Vice Mayor Hood, to <u>deny</u> the request to rezone the property at 1128 Roberts Street from R-1 Single-Family Residential Low Density to MC Medical Care.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Emory, Johnson, Gawron, Hood, and Ramsey

Nays: None

MOTION PASSES

2021-89 PUBLIC HEARINGS:

A. <u>Final PUD Approval at Adelaide Point</u> Planning

SUMMARY OF REQUEST: Request for final Planned Unit Development (PUD) approval for a mixed-use development at 920/1148/1204 W Western Avenue.

The Planning Commission unanimously recommended approval (5-0, 4 members absent) at their September 15 meeting, with the following conditions:

1. A stormwater permit is obtained from the Muskegon County Drain Commissioners Office.
2. Staff approves an amended site plan that addresses the comments from the Public Works, Fire, and Planning Departments.

STAFF RECOMMENDATION: To approve the request for final Planned Unit Development (PUD) approval for a mixed-use development at 920/1148/1204 W Western Avenue with the following conditions: 1)A revised site plan that addresses narrower streets and water main and fire hydrants locations is approved by staff 2) The site plan receives a stormwater permit from Muskegon County Drain Commissioners Office 3) A development agreement that establishes public accesses requirements is approved by the City Commission.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to close the public hearing and to approve the request for final Planned Unit Development (PUD) approval for a mixed-use development at 920/1148/1204 W Western Avenue with the following conditions: 1) A revised site plan that addresses narrower streets and water main and fire hydrants locations is approved by staff 2) The site plan receives a stormwater permit from Muskegon County drain Commissioners Office 3) A development agreement that establishes public accesses requirements is approved by the City Commission.

ROLL VOTE: Ayes: Rinsema-Sybenga, Emory, Johnson, Gawron, Hood, Ramsey, and German

Nays: None

MOTION PASSES

2021-90 NEW BUSINESS:

A. <u>DDA Liquor License – 1208 8th Street</u> Planning

SUMMARY OF REQUEST: Request for issuance of a DDA On-Premise Liquor License for Motu Lakeshore Wine Bar, LLC at 1208 8th Street

STAFF RECOMMENDATION: To approve the request for a DDA On-Premise Liquor License for Motu Lakeshore Wine Bar, LLC at 1208 8th Street.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to approve the request for a DDA On-Premise Liquor License for Motu Lakeshore Wine Bar, LLC at 1208 8th Street.

ROLL VOTE: Ayes: Emory, Johnson, Gawron, Hood, Ramsey, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner Ramsey requested an update at the next meeting as to what is happening at the Watermark. Commissioner Johnson announced an expungement clinic to be held on Friday, October 1, 2021 at the Muskegon Farmers Market from 3:30 p.m. – 7:30 p.m. Mayor Gawron announced that the City of Muskegon would be hosting the Michigan Municipal League Convention October 19-21, 2022.

PUBLIC COMMENT ON NON-AGENDA ITEMS: Public Comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 9:27 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: October 12, 2021	Title: Purchase vacant – 209 Merrill.
Submitted By: Hope Griffith	Department: Planning Department
Brief Summary: City staff is seeking authorization to purchase land at 209 Merrill from the State Land Bank Authority.	
Detailed Summary: The city is seeking to purchase the vacant land at 209 Merrill from the State Land Bank Authority and has offered $500 for the purchase price to construct a single-family home on. The estimated cost to construct the home is $250,000. The State sent paperwork stating that the base price starts at $1,500 as a minimum acceptable offer & $100 to process the deed.	
Amount Requested:$500 with option to negotiable.	Amount Budgeted: Yes.
Fund(s) or Account(s): Public Improvement	Fund(s) or Account(s): Public Improvement
Recommended Motion: Authorize the City Manager to negotiate the purchase price if the State does not accept the $500 offer and to authorize the Code Coordinator to complete the purchase of 209 Merrill Ave, as described in the attached documents and to have the Mayor and Clerk sign the resolution.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Resolution No. _______

MUSKEGON CITY COMMISSION

RESOLUTION TO PURCHASE STATE LAND BANK AUTHORITY-OWNED PROPERTY.

WHEREAS, The State Land Bank Authority has the authority to sell and utilize its properties to foster the development and to promote economic growth, and;

WHEREAS, the City of Muskegon desires to acquire such lands for purposes of development and to promote economic growth; and

WHEREAS, the City of Muskegon authorizes the Code Coordinator to sign the documents for the completion of the purchase on behalf of the City of Muskegon; and

NOW THEREFORE BE IT RESOLVED, that the City of Muskegon intends to construct a residential home shall set up necessary procedures and controls to provide for the property distribution of funds arising from the subsequent sale of the acquired property in conformity with the above mentioned acts.

Adopted this 12th day of October, 2021

Ayes:

Nays:

Absent:

By: _________________________
Stephen J. Gawron, Mayor

Attest: ________________________
Ann M. Meisch, MMC
Clerk

The City of Muskegon is interested in acquiring the following parcels:

1) City of Muskegon Revised Plat 1903 W ½ of Lot 8 Block 80
   Parcel # 61-24-205-080-0008-00
   Parcel ID # 1040874
   488 McLaughlin

2) City of Muskegon Revised Plat 1903 N ½ of Lot 6 Block 83
   Parcel # 61-24-205-083-0006-00
   Parcel ID # 1130446
   1164 Kenneth

3) City of Muskegon Revised Plat 1903 That Part of Lot 3 Lying NW'ly of St hwy r/w Block 146
   Parcel # 61-24-205-146-0003-00
   Parcel ID # 1130458
   411 Seaway

4) City of Muskegon Revised Plat 1903 SE 62 Feet of Lot 3 Block 236
   Parcel # 61-24-205-236-0003-00
   Parcel ID # 1130467
   1122 Spring

5) City of Muskegon Revised Plat 1903 S ½ of the N ½ Lots 11-12 Block 339
   Parcel # 61-24-205-339-0011-10
   Parcel ID # 1130477
   1237 7th

6) City of Muskegon Revised Plat 1903 N ½ of Lot 1 Block 382
   Parcel # 61-24-205-382-0001-00
   Parcel ID # 1130488
   1163 Sanford

7) City of Muskegon Revised Plat 1903 E ½ of Lots 7 & 8 Block 42
   Parcel # 61-24-205-042-0007-10
   Parcel ID # 2020067
   492 White

8) City of Muskegon Revised Plat 1903 W 44 feet of N 165 Feet of Lot 4 Block 51
   Parcel # 61-24-205-051-0004-00
   Parcel ID # 2020071
   723 Amity

9) City of Muskegon Revised Plat 1903 Lot 6 Ex S 50 feet Block 66
   Parcel # 61-24-205-066-0006-00
   Parcel ID # 2020072
   477 E Apple

10) City of Muskegon Revised Plat 1903 Lot 10 Block 69
Parcel # 61-24-205-069-0010-00
Parcel ID # 2020073
510 E Isabella

11) City of Muskegon Revised Plat 1903 N ½ Lot 8 S ½ Lot 9 Block 149
Parcel # 61-24-205-149-0008-00
Parcel ID # 2020075
509 Octavius

12) City of Muskegon Revised Plat 1903 E ½ Lot 1 Block 203
Parcel # 61-24-205-203-0001-10
Parcel ID # 2020076
391 Orchard

13) City of Muskegon Revised Plat 1903 S ½ of Lot 1 Block 210
Parcel # 61-24-205-210-0001-00
Parcel ID # 2020077
923 Emerald

14) City of Muskegon Revised Plat 1903 Lot 3 Block 210
Parcel # 61-24-205-210-0003-00
Parcel ID # 2020078
305 Amity

15) City of Muskegon Revised Plat 1903 Lot 6 Block 250
Parcel # 61-24-205-250-0006-00
Parcel ID # 2020082
334 Catherine

16) City of Muskegon Revised Plat 1903 Lot 5 Block 261
Parcel # 61-24-205-261-0005-00
Parcel ID # 2020083
354 McLaughlin

17) City of Muskegon Revised Plat 1903 W 70 Feet of Lot 1 Block 264
Parcel # 61-24-205-264-0001-00
Parcel ID # 2020084
1310 Pine

18) City of Muskegon Revised Plat 1903 Part of Lot 10 Block 275 Desc as Comm @ SE Cor of SD Block for POB th S 89 Deg 38 Min W 81 feet the N 60 feet th N 89 Deg 38 Min E 81 feet the S 60 ft to POB
Parcel # 61-24-205-275-0010-20
Parcel ID # 2020085
1479 Jiroch

19) City of Muskegon Revised Plat 1903 N 40 feet of Lot 4 Block 294
Parcel # 61-24-205-294-0004-00
Parcel ID # 2020086
1636 Pine

20) City of Muskegon Revised Plat 1903 E ½ Lot 10 Block 339
Parcel # 61-24-205-339-0010-10
Parcel ID # 2020090
536 W Muskegon

21) City of Muskegon Revised Plat 1903 N 91.5 Feet of Lot 5 Block 364
Parcel # 61-24-205-364-0005-00
Parcel ID # 2020093
1130 1st

22) City of Muskegon Revised Plat 1903 E ½ of Lot 11 Block 391
Parcel # 61-24-205-391-0011-10
Parcel ID # 2020096
238 Strong

23) City of Muskegon Revised Plat 1903 Lot 1 Block 449
Parcel # 61-24-205-449-0001-00
Parcel ID # 2020098
1686 7th

24) City of Muskegon Revised Plat 1903 Lot 2 Block 449
Parcel # 61-24-205-449-0002-00
Parcel ID # 2020099
1698 7th

25) City of Muskegon Erwin and Keating's Addition Lot 5 & N 5 Feet Lot 6 Block 1
Parcel # 61-24-290-001-0005-00
Parcel ID # 2020105
1974 Park

26) City of Muskegon Wharncliffe Grove Part of Block 2 R P Eastons 2nd Sub Div Part of Sec 32 Lot 53
Parcel # 61-24-890-000-0053-00
Parcel ID # 2020110
1979 McIlwraith

27) City of Muskegon Eastlawn Subdn. Of Blocks 3, 4, and 5 R.P. Eastons 2nd Subdn. Lots 25 & 26 Block 10
Parcel # 61-24-255-010-0025-00
Parcel ID # 1003402
1974 S Getty

28) City of Muskegon Revised Plat 1903 S ½ Lot 12 Block 389
Parcel # 61-24-205-389-0012-10
Parcel ID # 1102279
1359 6th

29) City of Muskegon Revised Plat 1903 Block 435 Lot 6
Parcel # 61-24-205-435-0006-00
Parcel ID # 411669
753 W Forest

30) City of Muskegon Revised Plat 1903 Lot 9 Block 406
Parcel # 61-24-205-406-0009-00
Parcel ID # 411612
1434 7th

31) City of Muskegon Revised Plat 1903 SLY 40 feet of WLY 66 feet Lot 7 Block 376
Parcel # 61-24-205-376-0007-15
Parcel ID # 411574
1366 7th

32) City of Muskegon Revised Plat 1903 ELY 44 feet of WLY 88 Feet Lots 8, 9, 10 Block 152
Parcel # 61-24-205-152-0008-10
Parcel ID # 411149
361 Sumner

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on October 12, 2021.

By: __________________________

Ann Marie Meisch, MMC

Clerk

STATE OF MICHIGAN
STATE LAND BANK AUTHORITY
LANSING

GRETCHEN WHITMER
GOVERNOR

EMILY DOERR
EXECUTIVE DIRECTOR

PROPERTY VALUATION INFORMATION AND CHART

Effective as of October 1, 2020

PROPERTY PRICING INFORMATIONAL CHART

Base Price Category		Price Starting at:	Notes
Base price		$1,500.00	Minimum acceptable offer consideration for a property
Buildable Side Lot		$750.00	Parcel and applicant must qualify for side lot pricing
Unbuildable Side Lot		$0.10/ sq. ft. Minimum $300.00	Parcel and applicant must qualify for side lot pricing

Square Footage Price Category		Price Starting at:
Rural Property	*2 acres or less*	$0.10/ sq. ft. Minimum $1,500.00
Rural Property	*2 + acres*	Appraised or Assessed value
Urban Property	*1 acre or less*	$1.00/ sq. ft. Minimum $1,500.00
Urban Property	*1+ acres*	Appraised or Assessed value

**Note all prices start at the amount noted but are subject to change or modification at the discretion of the SLBA at any time. The information listed above can be a tool to help an applicant determine what a State Land Bank Authority property may cost.*

The Executive Director of the SLBA reserves the right to approve or deny all offers and recommendations. As each property is unique, the SLBA reserves the right to establish a price appropriate for each property as provided by MCL 124.757 taking into account all of the factors described herein, as well as other factors, all in support of the SLBA's purpose. Likewise, the SLBA may decide at any time to not sell a property or reserve it for a future use. Nothing herein shall in any way limit the discretion and flexibility provided the SLBA in MCL 124.757.

FEES

Processing Fee of $100.00 per deed. An additional $25 per document, if required.

209 Merrill

MERRILL
4TH
3RD
MASON
386
-0007-00
1220
-0008-00
214
210
204
-0007-10
1228
-0001-00
1207
-0002-00
1211
-0003-00
1219
-0004-00
1225
-0005-00
-0014-10
201
-0014-00
-0013-00
209
-0012-00
219
-0011-00
1240
-0011-10
1252
-0010-00
1262
-0007-00
174
-0006-00
-0006-10
166
-0001-00
1241
-0001-10
1247
1251

10/ 4/2021

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 10/12/2021	Title: Muskegon Area Sports Hall of Fame Lease
Submitted By: Mike VanderMolen	Department: Arena

Brief Summary: The Muskegon Area Sports Hall of Fame is formally leasing space inside the arena to display sports memorabilia and other sports-related items.

Detailed Summary:

The Muskegon Area Sports Hall of Fame was located inside the arena for many years. During the most recent major renovation, the display was displaced. This lease will re-establish the Hall of Fame inside the arena for the next 5 years. The display wall be mounted on the walls inside the hallway nearest to the convention center.

The lease amount is $10 per year, the lease also allows a discounted $500 rental one time per year to hold a Hall of Fame banquet. The City has pledged up to $10,000 to help complete the build out.

The completed display will be a stunning first-impression to visitors of the arena.

Amount Requested: $10,000	Amount Budgeted: $10,000
Fund(s) or Account(s): 254	Fund(s) or Account(s): 254

Recommended Motion: Approval of the lease.

For City Clerk Use Only:

Commission Action:

LEASE AGREEMENT

This Lease ("Lease") is made effective as of ___________, 2021 ("Effective Date"), between the **City of Muskegon**, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("City" or "Landlord"), and **Muskegon Area Sports Hall of Fame, Inc.**, a Michigan nonprofit corporation, of 1205 Central Avenue, Muskegon, Michigan 49445 ("Tenant").

Background

A. City is the owner of the Mercy Health Area ("Arena") located at 470 West Western Avenue, Muskegon, Michigan 49440 ("Arena").

B. Tenant desires to lease from City, and City desires to lease to Tenant, a portion of the Arena to locate the Muskegon Area Sports Hall of Fame ("Hall of Fame") to display sports memorabilia and other sports-related items pursuant to the terms and conditions of this Lease.

Agreement

1. **Leased Premises.** In consideration of the rents and covenants to be paid, performed and observed by Tenant, Landlord leases to Tenant and Tenant accepts from Landlord, that certain space within the Arena described and identified on the attached **Exhibit A** ("Leased Premises"), subject to the terms and conditions of this Lease.

2. **Term.** The term of this Lease commences on the Effective Date. The initial term of this Lease shall be for a period of five (5) years. In addition, Tenant shall have 5 additional 5-year options to renew this Lease, provided (a) that Tenant is or has not been in any material default of this Agreement at any time during the initial term or any renewal term, (b) the Hall of Fame operated by Tenant has been in operation at normal times prior to each option term and (c) Tenant provides written notice of its exercise of each option to renew to the City not less than 180 days prior to the last day of the intitial term and any renewal term. The lease may be terminated by the City after the first renewal term or upon the occurrence of one of the following ("Terminating Events"): (a) the mutual written agreement by the parties; (b) the dissolution, bankruptcy, or insolvency of Tenant; (c) the parties agree to relocate Tenant to a mutually agreeable location in the Arena; or (d) the default of Tenant of a term of this Lease beyond any applicable cure period.

3. **Rent/Sponsorship Opportunities.** For the term of this Lease, Tenant shall pay Landlord a one-time rent payment in the amount of $10.00 for the Term payable upon execution of this Lease. City shall control all sponsorship opportunities within the Arena, including naming rights except for sponsorship of the annual banquet of the Hall of Fame.

4. **Use of Premises.** Tenant shall use and occupy the Leased Premises for purposes related to the Hall of Fame and for no other purpose without the prior written consent of Landlord.

5. **Common Areas.** In addition to use of the Leased Premises, and for no additional fee, Tenant will be allowed use of the reception area, the parking area, and the other common areas of the Arena on a limited basis and in connection with Tenant's use of the Leased Premises.

6. **Taxes and Utilities.** Landlord shall pay all real estate taxes and assessments on the Leased Premises and property in which the Leased Premises is located and provide at Landlord's sole expense gas (heat), electric and internet service for the Leased Premises during the term of this Lease.

7. **Insurance and Indemnity.**

a. Landlord shall, at its sole cost and expense, procure and maintain in full force and effect fire and extended coverage insurance with an all-risk endorsement on the Arena.

b. Tenant shall, at its sole cost and expense, procure and maintain in full force and effect during the term of this Lease, comprehensive public liability and property damage insurance for claims of personal injury, death, or property damage because of the use of the Leased Premises, with single limit liability coverage of not less than $1,000,000. Such policy shall name Landlord as an additional insured to the extent of Tenant's obligations under the Lease.

8. **Maintenance, Repair, Security and Tenant Access.** Landlord shall, at Landlord's sole expense, maintain in good condition and repair the Leased Premises and shall make any necessary capital replacements of the heating and air conditioning system, the electrical wiring system, and the roof and structural walls, to the extent necessary to preserve Tenant's intended use and enjoyment of the Leased Premises. Repairs or replacements necessitated by the negligent acts of Tenant shall be made at the expense of Tenant. Landlord shall secure the Premises and maintain the Leased Premises in good and sanitary order and condition. Tenant shall have access to the Premises at all times.

9. **Landlord's Work.** Landlord shall provide the Leased Premises to Tenant in a finished condition ready for Tenant's Work (defined below). For purposes of this Lease, "Landlord's Work" shall include the following:

a. Adequate mechanical and electrical systems for use;
b. Finished Flooring'
c. Drywall;
d. Paint; and,
e. Doors.

10. **Tenant's Work; Improvements and Alterations.** Tenant may make alterations, additions, and improvements to the Leased Premises as required for its use, upon approval of Landlord. Tenant may furnish and install equipment as needed to operate the Hall of Fame without the consent of Landlord including the right to install display cases and shelves, wall mounted televisions and monitors, trade fixtures, and equipment. All such furnishings and equipment shall remain the property of Tenant upon termination of this Lease. ("Tenant's Work").

11. **Tenant Allowance.** As further consideration of Tenant operating the Hall of Fame within the Leased Premises, Landlord shall provide Tenant with an allowance toward the cost of performing Tenant's Work in the amount of $30,000 ("Tenant Allowance"). The sources of funds for the Tenant Allowance is $10,000 from Dan Israel or his company, $10,000 from the City and $10,000 from Mercy Health. The Mercy Health contribution shall be used to honor LC Walker. The Tenant Allowance shall be paid to Tenant upon execution of this Lease. Tenant shall be permitted to use the Tenant Allowance on the Leased Premises in Tenant's discretion consistent with operation of the Hall of Fame.

12. **Compliance with Arena Rules.** Tenant shall comply with all the building rules established by the Arena. Landlord shall provide Tenant with a copy of such rules upon the execution of this Lease. Tenant or Tenant's employees shall not block or place any items that prevent access to and from the Arena entrances and exits.

13. **Right to Display.** Landlord agrees not to place any signs or allow any other materials or items to be located within the Leased Premises. Further, Landlord agrees not to permit any vendor, concessionaire, or other person to operate within the Leased Premises without the express written consent of Tenant.

14. **Right of Entry.** Landlord shall have the right to enter the Leased Premises at any time to confirm Tenant's compliance with this Lease and to make any necessary repairs, and in the event of emergency.

15. **Quiet Enjoyment.** Provided Tenant has fully performed its obligations under this Lease, Tenant shall be permitted to peaceably and quietly hold and enjoy the Leased Premises and all other rights set forth in this Lease, without hindrance from Landlord or any other person or entity. Landlord agrees that there are no restrictions applicable to the Leased Premises which affect and limit the right of Tenant to exercise any of the rights granted to Tenant by this Lease. Notwithstanding anything in this paragraph to the contrary, Landlord reserves the right to hold and conduct meetings, sporting events, practices, graduation ceremonies, job fairs, circuses, concerts, and other activities determined appropriate in the sole discretion of Landlord, within the Arena, as the case may be, and that such activities do not violate this paragraph.

16. **Event Use Dates; Annual Banquet.** Landlord and Tenant agree to reasonably work together to coordinate Hall of Fame event use dates that do not conflict with other groups visiting the Leased Premises. Further, at least once per year at a time between June 1 and August 30 that is mutually agreeable to Landlord and Tenant, Tenant shall have the exclusive right to use the Arena for its annual award ceremony and banquet for an annual fee of $500 which fee includes set-up and clean-up by Landlord and the use of the Arena's audio and video equipment for the day.

17. **Assignment and Subletting.** Tenant may not assign this Lease or sublet all or any part of the Leased Premises at any time during the term of this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

18. **Default and Repossession.** If the Leased Premises shall be deserted or vacated, or if proceedings are commenced against Tenant in any court under a bankruptcy act or for the appointment of a trustee or receiver of Tenant's property either before or after the commencement of the lease term, or if there shall be a default in the payment of rent or any part thereof for more than 10 days after written notice of such default by Landlord, or if there shall be default in the performance of any other covenant, agreement, condition, rule or regulation herein contained or hereafter established on the part of Tenant for more than 20 days after written notice of such default by Landlord, this Lease (if Landlord so elects) shall thereupon become null and void, and Landlord shall have the right to reenter or repossess the Leased Premises, either by force, summary proceedings, surrender, or otherwise, and dispossess and remove therefrom Tenant, or other occupants thereof, and their effects, without being liable to any prosecution therefor.

19. **Notices.** All notices, approvals, consents and other communications required under this Lease shall be in writing and shall be deemed given: (i) when delivered in person; (ii) when sent by fax or email: (iii) when sent by a nationally-recognized receipted overnight delivery service with delivery fees prepaid; or (iv) when sent by United States first-class, registered, or certified mail, postage prepaid. The notice shall be effective immediately upon personal delivery or upon transmission of the fax or email; one day after depositing with a nationally recognized overnight delivery service; and five days after sending by first class, registered, or certified mail.

Notices shall be sent to the parties as follows:

To Landlord: City of Muskegon
Attn: Mike Vandermolen
933 Terrace St.
Muskegon, MI 49440
Email: mike.vandermolen@shorelinecity.com

To Tenant: Muskegon Area Sports Hall of Fame, Inc.
Attn: Mike Mack
2660 Shadow Pine Dr.
Fruitport, MI 49415
Email: mackm@monashores.net

20. **General Provisions.**

a. ***Governing Law.*** This Lease will be governed by and interpreted in accordance with the laws of the state of Michigan.

b. ***Entire Agreement.*** This Lease constitutes the entire agreement of the parties and supersedes any other agreements, written or oral, that may have been made by and between the parties with respect to the subject matter of this Lease. All contemporaneous or prior negotiations and representations have been merged into this Lease.

c. ***Amendment.*** This Lease shall not be modified or amended except in a subsequent writing signed by all parties.

d. ***Binding Effect.*** This Lease shall be binding upon and enforceable by the parties and their respective legal representatives, permitted successors, and assigns.

e. ***Counterparts.*** This Lease may be executed in counterparts, and each set of duly delivered identical counterparts which includes all signatories, shall be deemed to be one original document.

f. ***Full Execution.*** This Lease requires the signature of all parties. Until fully executed, on a single copy or in counterparts, this Lease is of no binding force or effect and if not fully executed, this Lease is void.

{Signatures appear on the following page.}

LANDLORD – City of Muskegon

By________________________

Name: Stephen J. Gawron
Title: Mayor
Date: ____________________, 2021

By: ________________________

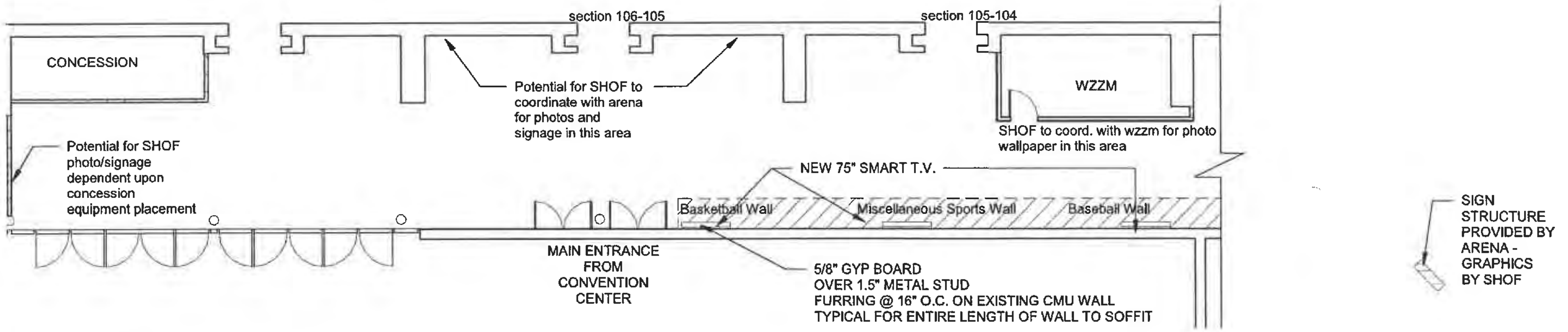
Name: Ann Meisch
Title: Clerk
Date: ____________________, 2021

TENANT – Muskegon Area Sports Hall of Fame, Inc.

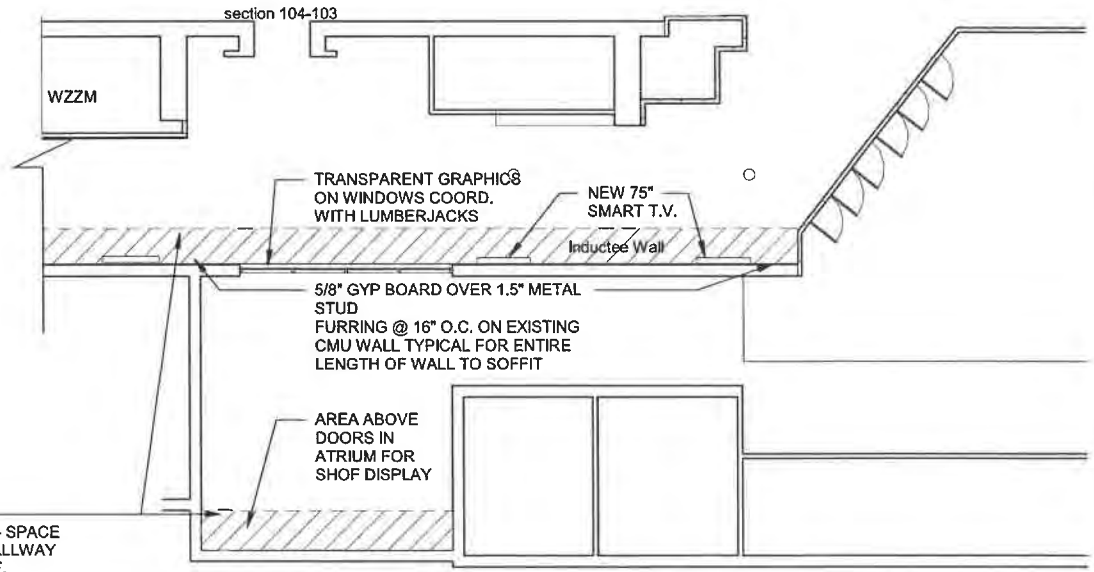
By: ______________________________

Name: Michael Mack
Title: President
Date: __________________, 2021

Exhibit A
Leased Premises



1 Muskegon Sports Hall of Fame Lease
3/32" = 1'-0"



2 Muskegon Sports Hall of Fame Lease .
3/32" = 1'-0"

08/26/21

ajr

andrea@ajr.design 231.557.0325

MERCY HEALTH ARENA

SD-0

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: October 12th, 2021	Title: Beukema Playground - REVISION
Submitted By: Leo Evans	Department: Public Works

Brief Summary:

Staff is seeking approval for additional funding related to the playground replacement at Beukema Park.

Detailed Summary:

At that August 24th, 2021 meeting the Commission voted to allocate $165,000 towards replacement of the playground equipment at Beukema Park. This was intended to cover the cost of the equipment and installation ($122,639.00) plus an allowance up to $165,000 in total to revise the deisgn to include ramped access and accessible surfacing as mentioned in the public comments during the selection.

After reviewing the proposed changes with American Athletix it was determined that there was no method for American Athletix to accomplish the requested changes within the allocated budget. After several iterations American Athletix provided the attached revised proposal for $220,568.25 which included modified play structures to include ramped access, as well as poured in place trails for the walkways.

Staff is comfortable that the revised proposal is appropriate for the site. As previously discussed we are targeting to spend approximately $900K between Reese & Beukema parks which is drawn from the Beach Parking revenue. The contract for equipment at Reese has been signed in the amount of $364,600.00 bringing to total to date to $585,168.25.

Amount Requested: $220,568.25 TOTAL $55,568.25 INCREASE OVER ORIGINAL	Amount Budgeted: $0 $900K To be included in Q1 Reforecast
Fund(s) or Account(s): 101	Fund(s) or Account(s): 101

Recommended Motion:

Authorize staff to accept the revised proposal from American Athletix in the amount of $220,568.25 for the new playground structure at Beukema Park.

Check if the following Departments need to approve the item first:

Police Dept. ☐

Fire Dept. ☐

IT Dept. ☐

For City Clerk Use Only:

Commission Action:

Bleachers ⬩ Stadium Seating ⬩ Playgrounds
Scoreboards ⬩ Gymnasium Equipment
Shelters ⬩ Site Amenities ⬩ More

info@americanathletix.com ❖ Office: (888) 399-4999 ❖ Fax: (888) 295-2319 ❖ P.O. Box 1881 ❖ Muskegon, MI 49443

Quotation

Project: Beukema Park
Attn: Leo Evans
City of Muskegon
1350 E. Keating
Muskegon, MI 49442
leo.evans@shorelinecity.com
231-724-6920
Description: Kompan revised

Date: 10/4/2021
Quote #: MUS2021-B
Expires: 11/4/2021
Approx. Lead Time 12 weeks
Custom lead time:

quantity	*item number*	*description*	*each*	*net*
1	PCM727092	5-12 Ramp Custom	$93,540.00	$65,478.00
	PCM103010-0610	PLAY TOWER WITH RAMP	$29,710.00	$20,797.00
2	ELE400024	SPINNER BOWL	$1,360.00	$2,176.00
1	KSW928-CUSTOM	4-BAY PORTAL SWING	$9,500.00	$7,600.00
1	PCM721275	Manipulative Play Panel	$2,770.00	$2,216.00
	Excavation	Excavate and dump spoils on site	$4,750.00	$4,750.00
	LANDSCAPING	Cleanup / site restoration	$4,500.00	$4,500.00
	OPTION #1 ***3285 SqFt***	Rubber Pathways - Supply and Install Pour in place Softline Firstbase rubber surfacing - Finish 3/4" 50% Black/ 50% Virgin Color Rubber with a Total depth of 4" for 8' fall height. Base layer is 100% Black Recycled Rubber. Comes with Aromatic resin.	$ 18.50	$60,772.50
	3285 SqFt	Granular sub base 6" depth	$ 2.25	$7,391.25
	OPTION #2 ***2848 SqFt***	Additional Rubber to Complete Surface - Remainder of Area - Supply and Install Pour in place Softline Firstbase rubber surfacing - Finish 3/4" 50% Black/50% Virgin Color Rubber with a Total depth of 4" for 8' fall height. Base layer is 100% Black Recycled Rubber. Comes with Aromatic resin.	*$ 17.75*	
	2848 SqFt	Granular sub base 6" depth	*$ 2.25*	
140		EWF pocket surfacing 140 CY ENGINEERED WOOD FIBER	$ 27.00	$3,780.00
1		ADA FULL RAMP	$924.00	$924.00
	INSTALL	PROFESSIONAL INSTALLATION	INSTALL:	$35,000.00
			EQUIPMENT TOTAL:	$180,384.25
		PAYMENT TERMS: DEP 50% & 50% DUE UPON COMPLETION	FREIGHT:	$5,184.00
			TAX:	NA
			ENGINEERING:	NA
			Quote Total:	$220,568.25

*ACCEPTANCE OF QUOTATION: This quotation is subject to policies in the current catalog and the following terms and conditions. Quotation is based on shipment of all items at the same time to one destination.
, unless otherwise noted. Pricing is subject to change beyond expiration date. Purchases in excess of $1000,00 must be supported by a written purchase order to American Athletix, LLC.
LEAD TIME: Tentative dates from receipt of deposit (if required); final approved drawings; colors and site prep and readiness.
FREIGHT: Freight charges are estimated. Subject to final charges from freight carrier.
EXCLUSIONS: Unless specifically included, this quotation excludes: all site work and landscaping; removal and disposal of existing equipment;
acceptance of equipment and off-loading; storage of goods prior to installation; equipment assembly and installation; safety surfacing, borders and drainage provisions.

Proposal By: John McDonald, American Athletix, LLC
Customer Acknowledges that he/she has read, understands, accepts and agrees to be bound by the Terms and Conditions attached
Accepted by: ______________________________ Date: ______________________

Purchase Order: ____________________________


Beukema Park
KOMPAN
Let's play

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: October 12, 2021	Title: Ride Muskegon Operating Agreement
Submitted By: Frank Peterson	Department: City Manager

Brief Summary: City staff has developed an operating agreement with Ride Muskegon, LLC to operate a scooter rental business in the City. The business will utilize a cellular phone application to unlock electric scooters for customers to access. Scooters will have designated pick up and drop off locations, and will not be permitted to be abandoned in non-approved areas.

Detailed Summary: Staff is recommending approval of the operating agreement. Ride Muskegon, LLC is locally owned and operated. To our knowledge, Ride Muskegon, LLC is the only such company located in the city limits. The operating agreement ensures that Ride Muskegon, LLC and its customers follow the rules and regulations as assigned by the City of Muskegon, and also ensures that the City of Muskegon will not rent similar space to new competitor companies during the operating period.

Amount Requested: $0	Amount Budgeted: $0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A

Recommended Motion: Approve the operating agreement and authorize the City Manager to sign.

Check if the following Departments need to approve the item first:

Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐

For City Clerk Use Only:

Commission Action:

OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made by and between Ride Muskegon, LLC, a Michigan limited liability company ("Operator"), and the City of Muskegon, Michigan ("Muskegon" and together with Operator collectively "Parties"). The Parties agree to the terms and conditions of this Agreement.

RECITALS

WHEREAS, the Parties agree to the following:

A. That authority to enter into this Agreement and each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

B. The Parties acknowledge that the mutual promises and covenants contained herein, and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Muskegon is a municipality incorporated under the laws of Michigan and has jurisdiction over the operations conducted within its municipal boundaries.

D. A goal of Muskegon is to provide safe and affordable multi-modal transportation options to all residents, reduce traffic congestion, and maximize carbon free mobility;

E. Scooter share and other Shared-Mobility devices, products, and services are a component to help Muskegon achieve its transportation goals and Muskegon's desires to make scooter share and related Shared-Mobility services available to residents and employees;

F. Operator is a qualified provider of electronic scooters ("e-scooters") and other shared electronic mobility devices, products, and services and proposes to operate a scooter share and Shared-Mobility program within Muskegon;

G. Operator requests the non-exclusive use of Muskegon streets, sidewalks, and public ways to provide e-scooter and other electronic Shared-Mobility services efficiently and effectively; and

H. The use of Muskegon streets, sidewalks, and public ways for e-scooter share and other Shared-Mobility Devices is a benefit to the residents and businesses of Muskegon.

I. That the purpose of this Agreement is to establish the terms and conditions relating to Operator's operation of e-scooter and other electronic Shared-Mobility services ("Shared-Mobility Services") in the jurisdictions that make up Muskegon.

THEREFORE, in consideration of the foregoing and the acceptance of all response, verbal and written, submitted by Operator, hereby incorporated by reference, and intending to be legally bound, the Parties enter into an Agreement for Shared-Mobility Services as follows:

I. DEFINITIONS

The following terms will be construed and interpreted as follows:

A. **"Effective Date"** means the date on which this Agreements is fully approved and executed, as shown by the final signature on the signature page of this Agreement.

B. **"Intellectual Property"** means Operator's Shared-Mobility Devices and other equipment, all materials and Marks prepared by Operator or its Affiliates in connection with this Agreement, copyrights, software, patents, patent applications and patent disclosures and inventions (whether patentable or not), all know-how, show-how and confidential information related to any of the foregoing, and together with all of the moral rights in and goodwill associated therewith, derivative works, corrections, enhancements, updates, modifications, tangible or intangible proprietary information, rights to apply for registration, except for any confidential information of Muskegon.

C. **"Marks"** means trademarks, service marks, trade secrets, trade dress, trade names, logos, taglines, corporate names and domain names, insignia, and symbols or decorative signs.

D. **"Operating Area"** means the designated jurisdictional boundaries of Muskegon where Shared-Mobility Devices are authorized to be operated by users.

E. **"City Property"** means property owned, leased, or controlled by the City of Muskegon, including but not limited to public right of way, easements, city and regional parkland, and green space surrounding City-owned Buildings.

F. **"Shared-Mobility Devices"** means e-bikes, e-scooters, and additional related products provided by Operator to Muskegon approved and agreed to by the Parties in this Agreement.

G. **"Shared-Mobility Services"** means all e-scooter and other electronic Shared-Mobility services provided by Operator to Muskegon approved and agreed to by the Parties in this Agreement.

H. **"Designated Parking Zone"** is a space located in the public right-of-way specifically identified by City of Muskegon for parking Shared-Mobility Devices between trips, which will not be used by any other company, except for Operator, during this Agreement. Muskegon reserves the right to change the "Designated Parking Zone" on sixty (60) days' written notice.

I. **"Term"** means collectively the Initial Term, and any potential Renewal Terms.

J. **"Service Area"** means the area within Muskegon's municipal boundaries.

K. "**E-Scooter"** is defined as an electric skateboard, which includes a stand-on scooter with an electric motor per Michigan Vehicle Code Act 300, 257.660 (MCL 257-660).

L. **"Electric Assist Bicycle"** is defined as a bicycle equipped with an electric motor that provides assistance only when the rider is pedaling and disengages or ceases to function when the bicycle reaches a speed of twenty (20) miles per hour per Michigan Vehicle Code, Act 300, 257-13e (MCL 257-13e).

M. **"Transit Zone"** means any portion of a street, sidewalk, or other area intended for use of transit vehicles or patrons, including bus stops, bus platforms, transit shelters, passenger waiting areas, and bus layover and staging zones.

II. TERM AND RENEWAL

A. **Initial Term.** This Agreement and the Parties respective performance will commence on the Effective Date and continue for a period of ten (10) years from the Effective Date ("Initial Term"), unless sooner terminated as provided herein. Upon expiration of the Initial Term, this Agreement will automatically renew for up to four (4) additional five (5) year periods (each five (5) year period is a "Renewal Term") unless either Party provides written notice to the other Party of its election not to renew no later than one hundred twenty (120) days prior to the expiration of the Initial Term or a Renewal Term.

III. USE OF PREMISES

Subject to the conditions of this Agreement, Muskegon hereby grants Operator a license to operate and provide the services and products described herein within its jurisdiction and to access designated locations approved by Muskegon for the purpose of installing, establishing, and maintaining docking stations, Shared-Mobility Devices and Services. This license is subject to the following conditions:

A. **Approvals.** Operator will obtain all required federal, state, and local licenses and permits necessary to perform the services. Operator will maintain good standing and comply with all required federal, state, municipal and local laws, regulations, rules, and ordinances. If any governmental restrictions are imposed on Operator that would necessitate alteration of the performance of the services offered by Operator under this Agreement, Operator will immediately notify Muskegon and will work with Muskegon in good faith to modify the services in a way to comply with such restriction but also maintains the essence of this Agreement.

B. **Municipal Authorization.** Operator acknowledges that it may be required to obtain additional approvals from Muskegon to conduct certain aspects of its services, including establishing docking stations in the public right of way. Muskegon agrees to assist Operator, as appropriate, with navigating its approval procedures to obtain required licenses, permits, authorizations, approvals, licenses, or consents. Notwithstanding this commitment, Muskegon cannot guarantee approval of any application or request of Operator and nothing in this section will be interpreted to do so. Furthermore, if such authorization cannot be obtained, the Agreement will not become binding on Operator and neither Party will be held liable for such failure.

C. State Law. The Parties acknowledge that use of the Shared-Mobility Devices is subject to the laws of the State of Michigan. To the extent legislative efforts are needed at the state level, Operator will be solely responsible for all such efforts that may be necessary.

IV. SERVICES

A. Establishing Goals. Fleet size and service areas will be based on reasonable goals. Parties will work together to create and update goals based on data and usage. Operator will comply with all reasonable requests to deploy, establish, and maintain Shared-Mobility Devices and Services, throughout the jurisdiction of Muskegon, based on the goals set by the Parties subject to the conditions contained in this Agreement. Both Parties acknowledge that during a global pandemic which has created great uncertainty in the production and movement of products throughout the world. It is acknowledged that the project goals above are subject to change. Therefore, Parties will provide written notice if a goal will not be achieved and such failure to achieve a goal will not be considered a breach of this Agreement.

B. Location of Fleet. Operator will decide how to distribute Shared-Mobility Devices and docking stations within the service area after consultation with Muskegon and its appropriate municipal departments to ensure reasonable distribution. Operator will only locate Shared-Mobility Devices and docking stations once written approval has been given by Muskegon's appropriate departments (which will be identified and disclosed by Muskegon to Operator contemporaneously with executing this Agreement, or within a reasonable amount of time thereafter). Once a location has been approved in writing it will be attached to this Agreement as Attachment F and updated as needed.

C. Hours. Operator will provide a safe, clean, and accessible system that allows public access and use of Shared-Mobility Devices and docking stations twenty-four (24) hours per day, seven (7) days a week, unless weather inhibits use of Operator's system for any period of time, in accordance with Attachment B, "Key Performance Indicators."

D. Tracking. Operator and Muskegon's appropriate department(s) (which will be identified and disclosed by Muskegon to Operator contemporaneously with executing this Agreement, or within a reasonable amount of time thereafter) will communicate data and work together to designate operating areas and regulate and track electric assist functions for Shared-Mobility Devices through geo-fencing or other available means, as agreed upon by the Parties and otherwise described in the specific conditions found in this Agreement as Attachments C, "City of Muskegon Specific Area Conditions."

V. EQUIPMENT

Operator will provide the following equipment on or before the date on which the Shared-Mobility Devices are deployed as required by this Agreement:

A. Installation of Shared-Mobility Devices. Operator will supply, install, deploy, establish, and maintain the quantity of e-bikes, e-scooters, and docking stations as needed by Muskegon.

B. Application and Web Page. Operator will establish a downloadable mobile application where users can order services and obtain information. Operator will make the mobile application available for download in Apple iOS and Android so that customers may download the mobile application to their mobile devices and register for an account, subject to their acceptance of the end user license agreement and other legal notices related to the mobile application. Operator will make the mobile application available for use in connection with use of the Shared-Mobility Devices, including unlocking a Shared-Mobility Device from a docking station.

C. Usage. Operator will have all necessary software and technology to be able to monitor customer usage of Operators equipment and to make adjustment to quantities of Shared-Mobility Devices at applicable docking stations.

D. Maintenance by Operator. Operator will maintain its Shared-Mobility Devices, docking stations, mobile application, web page, and all software and technology in good working order in accordance with the key performance indicators set forth in Attachment B, including routine and necessary maintenance and repairs.

E. Facilities. Muskegon agrees to furnish, without charge, mutually agreeable locations and adequate municipal space for use by Operator and Operator's personnel for storage and for performing services as maybe reasonably necessary under this Agreement and found in this Agreement as Attachment G, "Map of Furnished Facilities and Scope of Facility Use." Muskegon reserves the right to alter the "Facilities" upon sixty (60) days' written notice.

F. Removal by Muskegon. If an area in proximity to a docking station or other property owned by Operator requires maintenance, is the location of an event, or otherwise requires access by an agent of Muskegon, Muskegon may, with seven (7) day's advance written notice to Operator, require the Operator to move its property. Such relocation may be temporary or permanent; if permanent, Muskegon will work in good faith with the Operator to find a replacement location. Such relocation will be at the Operator's expense. If Muskegon is forced to move Operator's property, Muskegon will not be liable for any resulting damage to this property.

G. Standards. All Shared-Mobility Devices and docking stations will comply with all safety standards established by the United States Consumer Product Safety Commission and any other standard established under federal, state, and local law.

H. Equipment Specifications, Maintenance, and Security. Operator will ensure that:

(1) All scooters must meet the requirements for lighting equipment set forth in Michigan Vehicle Code 257.662.

(2) All bicycles and scooters must be powered by electric motor (internal combustion engines are not permitted).

(3) Each bicycle and scooter must have a unique identifier, such as a number visible to the user of the bicycle and scooter.

(4) All bicycles and scooters must include on-board GPS capabilities to ensure Operator's ability to locate and retrieve bicycles and scooters at any time as needed.

(5) Each bicycle and scooter must be maintained in a safe and operable condition, and any bicycles or scooters deemed to be inoperable or unsafe must be immediately made unavailable for use and removed from city property.

(6) Operator will have the ability to remotely lock or disable any Shared-Mobility Device deemed unsafe by either Party. Operator will remotely lock or disable any unsafe Shared-Mobility Device upon request by Muskegon.

(7) Operator must provide customers and city staff with a twenty-four (24) hour customer service phone number and electronic communication method(s) for reporting safety or maintenance issues with Shared-Mobility Devices, or to ask questions or register complaints.

(8) All Shared-Mobility Devices, docking stations, and equipment used by Operator in connection with this Agreement, unless otherwise expressly set forth in this Agreement, will remain the property of Operator, and will at no time be deemed a fixture or property belonging to Muskegon or any other party. Any equipment belonging to Muskegon used in connection with this Agreement, unless otherwise expressly set forth in this Agreement, will remain the property of Muskegon. The Parties will not directly or indirectly cause or create any mortgage, pledge, lien, charge, security interest, claim or other encumbrance on or with respect to such equipment.

(9) Operator will require its users to acknowledge and accept the applicable laws for operation of bicycles and scooters in the city of Muskegon and as required in MCL Article 257, Sections 642(1), 648, 656, 662, 676, 679, 69, and 79 and any applicable City of Muskegon Ordinance and require that users comply with these laws prior to use.

(10) Operator must require its users to acknowledge and accept that the customer will not use the bicycles or scooters in a manner that is illegal, reckless, or in a manner that endangers others.

VI. OPERATIONS

A. Support. Operator will provide ongoing support, training, parts, and other agreed upon services and actions for its local operational personnel to ensure continued access and enjoyment by users without interruption.

B. Business Operation. Operator will be solely and exclusively responsible for system operations, maintenance, collection of fees and revenues, and promotion of products. Muskegon acknowledges and agrees that Operator may, at its sole discretion, use subcontractors and consultants to perform some or all of the services or provide devices under this Agreement. In the event Operator utilizes subcontractors or consultants to perform any services or provide any of the devices, Operator will remain responsible under this Agreement.

C. Customer Service. Operator will maintain a call center that can be accessed by the public by phone or electronically. Operator will sufficiently staff such facilities and provide all tools, parts, training, supplies, and equipment to ensure the highest level of customer service with minimum response time waits.

D. Staffing. Operator will maintain qualified personnel and ensure adequate staffing to respond to customer demands, including staffing for expected large-scale community and college events. Operator will employ sufficient staff, contractors, and vendors in number and skill to be capable of providing the services.

E. Public Outreach. At the request of Muskegon, Operator may have a designated representative attend Muskegon-led public events and meetings as decided at the sole discretion of Operator.

F. Non-discrimination. Operator, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that no person on the grounds of race, color, national origin, veteran status, gender, sexual orientation, disability, or any other protected class will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of any of its services.

G. Advertising Policies. If Operator desires to advertise on its equipment, any advertisements must be pre-approved by Muskegon, and meet local and state advertising regulations before they are installed or otherwise displayed. Such requests to Muskegon must either be approved or denied in writing within twenty-one (21) business days of any written request by Operator and, if Muskegon does not timely provide its decision, the advertisement will be deemed approved for use. Operator agrees to abide by Muskegon's advertising restrictions related to advertisements and understands that Muskegon will have a right to review in advance, monitor and or disallow all advertising that Operator proposes to install or display, in its sole discretion. Muskegon will have the right to request, in writing, the removal of any advertising and Operator will have twenty-one (21) business days to comply with the written request. Muskegon will not be entitled to any revenue generated from advertising under this Agreement.

VII. USER FEES

In addition to any other fees required under this Agreement, Operator may establish, charge, and collect user fees from customers for the use of Operator's e-bikes and e-scooters, subject to the following conditions:

A. Responsibility. Operator will be solely responsible for processing and handling all payments, fees, penalties, or other monetary transactions by users of the system.

B. Payment Methods. Operator's system will be designed to automatically complete financial transactions entered with data input at its mobile application.

VIII. GENERAL OPERATIONAL CONDITIONS ON USE

A. Safety. Operator will require any user renting its Shared-Mobility Devices to have read and acknowledged reading safety requirements and conditions of use. Operator and Muskegon will work together to identify such safety requirements and conditions of use, but at a minimum, such conditions will include informing the user that a helmet should be used for the operation of Shared-Mobility Devices, speed limitations for such devices, and location restrictions for such devices. User's injury or violation of any applicable law or sanctions for any illegal or improper use of bicycles or scooters including, but not limited to, parking violations, will not constitute Operator's failure to notify users of all applicable laws, codes, ordinances, and safety guidelines as required under this Agreement.

B. Protocols. Operator will develop and maintain protocols that can be utilized for handling extreme weather events, emergency situations, extraordinary events, and maintenance activities. These protocols will be made available to Muskegon upon request.

C. Training. Operator will develop and provide at least one training/educational class at a location, to be determined by Muskegon, demonstrating how to access and use Shared-Mobility Devices and Shared-Mobility Services. Operator will report back to Muskegon on attendance and engagement for the training upon completion. Operator will work with Muskegon to develop and implement a marketing and outreach plan for the training class.

D. Speeds. Subject to further restrictions under this agreement, Operator will ensure that the maximum operating speed for the electric function of Shared-Mobility Devices does not exceed twenty (20) miles per hour for e-bikes and fifteen (15) miles per hour for e-scooters and will work with Muskegon to implement speed restriction zones where necessary.

E. Bicycle and Scooter Parking. Muskegon, at its own discretion, may support the Shared-Mobility Services and Shared-Mobility Devices with the installation of racks and or Designated Parking Zones in Muskegon to assist with the orderly parking of Shared-Mobility Devices throughout the service area. The decision to undertake such action, and the decision as to where such racks or parking areas will be located will be the sole discretion of Muskegon.

IX. LOCATIONAL RESTRICTIONS

A. Out of Hub Fee. Operator will charge a user a minimum fee of _____ ($___) dollars for failing to dock a Shared-Mobility Device to an approved designated structural or virtual docking station under this agreement.

B. Out of Area Fee. Operator will charge a user an Operator-determined fee for leaving a Shared-Mobility Device in a location outside the Operating Area.

C. Restricted Usage. Operator will ensure that the electronic assist function of any Shared-Mobility Device that operates outside the Operating Area is automatically disabled once the Shared-Mobility Device leaves the Operating Area.

D. Operator's Response. Operator will include contact information on each Shared-Mobility Device where complaints can be received. Operator will also include information about how complaints can be reported to Operator when Shared-Mobility Devices are accessed. If Operator receives a complaint that any Shared-Mobility Device has been improperly parked or not docked to a designated structural or virtual docking station, Operator will respond to the complaint, remove the Shared-Mobility Device from its current location, and return the Shared-Mobility Devices to an appropriate structural or virtual docking station within a reasonable amount of time.

E. Geofencing. Muskegon reserves the right to mandate Operator use geofencing or other in-app methods to prohibit parking, using, or locking scooters in specified areas, and or to direct users to specified parking areas, to make such request, Muskegon must document in writing how such geofencing measures are necessary for the public health, safety, and welfare of Muskegon. Operator will also use geofencing or other in-app methods to limit speed of bicycles and scooters in designated areas. Operator will comply with any geofencing requirements within five (5) business days of a written request made by Muskegon or any of its respective municipal departments.

X. DATA

A. Collection. Operator will collect data related to the use of its Shared-Mobility Devices. Such data will include number of users, number of trips, trip origin/destination and routes, trip time, trip mileage, docking station usage, devices in service, operable devices, and other data related to the key performance indicators set forth in Attachment B. Such data may also include carbon impacts, calories burned, and money saved. Operator will also collect real time data on the location of Shared-Mobility Devices, maintenance status, customer complaints, response times, aggregate system use, crashes, damaged/lost vehicles, fee collection/revenue. All data collected, including GPS tracking, will be based upon information collected from the Shared-Mobility Devices and not from a user's phone. Operator may provide users with user surveys only if surveys are opt-in and all survey questions are approved by Muskegon prior to use.

B. Sharing. Within seven (7) days of receipt of a written request by Muskegon or any of this respective municipal departments, Operator will provide Muskegon with data collected pursuant to this section during the term of this Agreement. Operator will also supply data on request for special projects, as part of transportation and infrastructure planning, and any other reasonable requests. Data will be provided in MDS format to the Muskegon and any other third party approved by Muskegon. Muskegon retains the right to request aggregated reports on system use, compliance, and operations in other available formats (.csv, .exls, or similar), if such request are deemed reasonable. Shared data will be anonymized to be available to the public for use in applications not affiliated with Operator or Muskegon.

C. Privacy. Operator will keep all data collected anonymous and not collect personally identifiable information so that such data may be disseminated to the public and not for use in third-party applications. Operator will provide each user with a clear and upfront description of data collected to users to ensure that the user fully understands and agrees to data collection. This will include a clear identification of data collected while using Operator's website and or mobile application. To protect the user's privacy interest, Operator will not include any provision requiring a user to agree that personally identifiable information may be shared with third parties. Operator will not include any provision requiring a user to agree to data sharing from a user's personal device to use Operator's services. Rather, Operator will include an opt-in function for access and data collection from a user's personal device.

XI. COOPERATION

Muskegon agrees that Operator will provide Shared-Mobility Services and Shared-Mobility Devices within the Service Area or Operating Area during the term of this Agreement. Muskegon will make all reasonable and good faith efforts, and to the best and fullest extent of Muskegon's ability, to coordinate with Operator to ensure that all required resources are made available to Operator. Muskegon shall not permit a "Designated Parking Zone" for a competitor to be located on City controlled real property within one hundred (100) feet of a Designated

Parking Zone used by Operator.

XII. TERMINATION

A. Breach by Operator. Muskegon may terminate its participation in this Agreement due to a material breach of Operator by providing written notice to Operator and giving Operator thirty (30) days to correct the breach. If Operator fails to correct the breach to the satisfaction of Muskegon within thirty (30) days of Operator's receipt of the notice, Muskegon may terminate its participation in this Agreement immediately.

B. Breach by Muskegon. If Muskegon commits a material breach of this Agreement, Operator may terminate its responsibilities to Muskegon under this Agreement by providing notice to Muskegon and give Muskegon sixty (60) days to correct the breach. If Muskegon fails to correct the breach to the satisfaction of Operator within sixty (60) days, Operator may immediately terminate its obligations to Muskegon.

C. Voluntary by Operator or Muskegon. Operator may voluntarily terminate this Agreement by providing Muskegon ninety (90) days' written notice prior to the desired termination date. After December 31, 2023, Muskegon may voluntarily terminate this Agreement by providing Operator ninety (90) days' written notice prior to the desired termination date.

XIII. CONDITION ON TERMINATION

Upon expiration or termination of this Agreement, Operator will remove all Shared-Mobility Devices, docking stations, and any other equipment within thirty (30) days and return the applicable premises to the same condition as it existed prior to this Agreement, unless otherwise agreed to in writing with Muskegon.

XIV. INTELLECTUAL PROPERTY

All rights in Operator's Intellectual Property related to the services provided under this Agreement, are and will be owned by Operator (or, in certain instances, by its Affiliates), and not by Muskegon. Operator hereby grants Muskegon a limited license to use all such Intellectual Property rights solely in connection with the services during the term, free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sub licensable, fully paid-up, and royalty-free basis, to the extent necessary to enable Muskegon to make reasonable use of the services. Muskegon acknowledges and agrees that other than as expressly provided herein, nothing in this Agreement will be construed as Operator directly or indirectly, selling, leasing, licensing, pledging, sublicensing, lending, encumbering or otherwise transferring any of the foregoing Intellectual Property rights other than in connection with the services.

XV. MARKS

No Party grants to the other Party any right in or license to use such Party's Marks, other than as expressly set forth in this Agreement. Any signage or communication containing a Party's Marks must be approved by that Party, in advance.

XVI. REPRESENTATIONS AND WARRANTIES

A. Operator. Operator represents and warrants that (a) it is duly authorized to do business by the State of Michigan; (b) it has the lawful power to engage in the business it presently conducts and contemplates conducting, and is not party to any investigation, proceeding or action by any governmental authority which may materially affect its ability to effectuate its obligations under this Agreement and, in the event that it becomes such a party, will immediately notify Muskegon of such investigation, proceeding or action; (c) it has the authority to execute and carry out this Agreement and to perform its obligations hereunder, and has obtained all necessary authorizations in connection therewith; (d) it has obtained and will obtain from time to time any and all licenses, permits or other approvals required under applicable law, which license, permits or other approvals will be kept current at all times throughout the Term; (e) the execution, delivery and performance of under this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by its constituent documents or internal regulations, any applicable law or any material covenant, agreement, understanding, decree, judgment, indenture, instrument or order to which it is a party or by which it or any of its properties or assets is bound or affected; and (f) it will comply with all applicable law related to this Agreement and will cooperate fully with Muskegon in complying with such applicable law.

B. Muskegon. Muskegon represents and warrants that they are the governmental authority with jurisdiction over its respective premises, that they have obtained all necessary approval and possess the legal authority to enter into this Agreement, and have taken all actions required by its procedures, by-laws, or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind themselves to its terms.

XVII. INSURANCE

Prior to the Effective Date of this Agreement, Operator will obtain insurance coverage meeting each requirement and condition set forth herein.

A. Carrier. Operator will obtain insurance coverage from an insurance company registered and licensed to do business in the State of Michigan and having an A.M. Best insurance rating of at least A- financial size category VIII or better by the latest *Best Insurance Report* or has an analogous rating from a comparable rating service approved by Muskegon.

B. Certificate of Insurance. Proof of insurance and compliance with all requirements in this section should be evidenced on a certificate of insurance acceptable to Muskegon. The certificate will, at a minimum, contain the following: (1) authorized agent information; (2) insured information; (3) insurance company information; (4) description of policies, including coverage types and amounts; (5) policy number(s) and period(s); (6) limits of liability; (7) Muskegon's information as additional insured and certificate holder; and (8) cancellation information. The certificate of insurance must be received by Muskegon prior to the Effective Date of this Agreement.

C. Additional Insured. Each required insurance policy (except for workers' compensation) will name Muskegon as an additional insured and loss payee.

D. Cancellation. All certificates will contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed, or not renewed without at least thirty (30) days written prior notice to Muskegon, or fifteen (15) days for non-payment. The policies will not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents, or other representatives, and will contain a clause to the effect that such policies and the coverage evidenced thereby will be primary with respect to any policies carried by Muskegon, and that any coverage carried by Muskegon will be excess insurance.

E. Insurance Coverages. During the term of this Agreement, Operator agrees to purchase and maintain the following types of insurance coverages, consistent with the policies and requirements of Muskegon and provide evidence of continuing coverage to Muskegon:

a. Commercial General Liability Insurance. Operator will procure Commercial General Liability Insurance, on an occurrence form, providing all major divisions of coverage, including but not limited to: (1) Premises Operations; (2) Products and Completed Operations; (3) Personal Injury and Advertising liability; (4) Fire legal liability. The Commercial General Liability Insurance will provide the following minimum limits:

General Aggregate:	$2,000,000
Products-Completed Operations	$2,000,000
Personal & Advertising Injury	$1,000,000
Each Occurrence	$1,000,000
Damage to Rented Premises	$250,000
Med. Expense (Any one person)	$5,000

b. Workers Compensation. Operator will provide Workers' Compensation coverage in accordance with the statutory limits as established by the State of Michigan and with a minimum limit for employer's liability no lower than the following: Bodily Injury by Accident – $500,000 each accident; Bodily Injury by Disease – $500,000 each employee. Operator will require all contractors and subcontractors performing work on its behalf under this Agreement to obtain an insurance certificate showing proof of Workers' Compensation coverages and Operator will require that all subcontractors submit certificates of such insurance to Muskegon prior to performing.

c. Employers' Liability Insurance. Operator will also maintain Employers' Liability Insurance Coverage with limits of at least:

Bodily Injury by Accident:	$500,000 each accident
Bodily Injury by Disease:	$500,000 policy limit
	$500,000 each employee

d. Commercial Business Automobile Liability Insurance. Operator will provide Commercial Business Automobile Liability Insurance, which will include coverage for bodily injury and property damage liability arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy will provide not less than $1,000,000 Combined Single Limits for each accident.

e. Commercial Umbrella Liability Insurance. Operator will provide a Commercial Umbrella Liability Insurance Policy to provide excess coverage above the Commercial General Liability, the Commercial Business Automobile Liability, and Employers' Liability on a follow form basis in addition to the minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits stated above will be $2,000,000 per occurrence and $2,000,000 in the aggregate.

f. Application to Others. Operator will require all contractors, subcontractors, agents, or workers performing work or services on its behalf in furtherance of this Agreement to obtain an insurance coverage meeting the requirements of this section as evidence on a certificate of insurance. Operator will require that all such persons submit certificates of such insurance to Muskegon prior to performing work or services.

g. Maintaining Coverage. Muskegon may require copies of any insurance policies entered into by Operator, and Operator is responsible for annually verifying and confirming in writing to the City that all sub-contractors, agents, operators or workers meet the minimum coverage and limits plus maintain current certificates of coverage, and that all work activities related to this Agreement will meet minimum coverage and limits, with any sub-contractors, agents, operators or workers complying with the same insurance requirements as Operator.

h. Continuing Obligation. Unless otherwise expressly provided herein, the obligation to insure as provided herein continues throughout term of this Agreement and will not terminate until this Agreement has expired or been terminated, and the right to occupy the premises is returned to Muskegon.

XVIII. INDEMNIFICATION

Operator will—at its sole cost and expense—indemnify, defend, and hold harmless Muskegon , its officers, agents, and employees, its successors and assigns, individually or collectively, from and against all liability and any claims, suits, expenses, losses, judgments, proceedings, damages, expenses, demands, suits, costs (including costs of defense, reasonable attorney fees, and reasonable professional fees incurred in defense or incurred in enforcement of this indemnity), and causes of action of every kind or character whatsoever, directly or indirectly arising from, related to, or connected with, in whole or in part, Operator's services under this Agreement, including but not limited to claims directly or indirectly arising from, related to or connected with, in whole or in part: any act, omission, fraud, wrongful or reckless conduct, fault or negligence by Operator, or its officers, directors, agents, employees, subcontractors or suppliers of any tier, or by any of its employees, agents, or persons under its direction or control.

XIX. LIMITATION OF LIABILITY

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted under applicable law, no Party will be liable to the other Party for any indirect, special, consequential, moral, exemplary, or punitive damages, or for any loss of use, loss of production, loss of revenue or profits, cost of capital, loss of goodwill, or loss of opportunity, arising out of or in connection with, this Agreement, whether based in contract, tort, or any other theory at law or in equity, regardless of whether such damage was foreseeable and each Party expressly releases the other Party from any such liability. The limitations on liability in this section will not apply to: (1) a Party's criminal or fraudulent conduct; (2) Operator's obligations of indemnification; (3) any applicable insurance proceeds; or (4) anything prohibited by applicable law governing the Parties.

Each Party assumes all risks of personal injury and property damage attributable to the acts or omissions of such Party or any of its affiliates, to the degree that such damage is attributable to such Party or its affiliate. Operator makes no warrant whatsoever with respect to the services (including, for clarification, the deliverables, and the services), including any: (i) warranty of merchantability, (ii) warranty of fitness for a particular purpose, or (iii) warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise.

XX. DAMAGE TO PROPERTY

Operator will only be responsible held responsible for damage to property belonging to Muskegon only to the extent caused by an act or omission of the Operator, its agents, or employees. Operator will be responsible for repairing any damaged property and will pay the costs therefore.

XXI. TAXES

The Parties will be solely responsible for their respective taxes, if any, and related interest or penalties, incurred by such Party in respect of this Agreement including, without limitation, any federal, state, or local income tax, and any withholding or employment taxes imposed upon such Party, including in respect of any advertising revenue to such Party. To the extent that Muskegon owned real property becomes taxable due to this Operating Agreement, Operator shall reimburse Muskegon for such taxes.

XXII. FORCE MAJEURE

Neither Party will be deemed to have breached this Agreement if it is prevented from performing any of its obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the Party experiencing force majeure gives written notice to the other Party identifying the nature of such force majeure, and when it began. The Party experiencing force majeure will take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Agreement will be resumed immediately after such cause has been removed, provided that neither Party will be required to settle any labor dispute except upon terms that the Party deems acceptable. The suspension of any obligations under this section will not cause the term of this Agreement to be extended and will not affect any rights accrued under this Agreement prior to the occurrence of the force majeure. The Party giving notice of the force majeure will also give notice of its cessation.

XXIII. NOTICES AND REPRESENTATIVES

All notices and communications related to this Agreement should be made to the following representatives for each Party. Each such notice, request, or other communication will be effective five (5) business days after depositing in the mail or forty-eight (48) hours after the date on which an e-mail notice is verified as received.

Ride Muskegon, LLC
Attn: Stephen Parent
Title: Member
Email: stephen@ridemuskegon.com
Phone #: 231-557-6446
Address: 10574 Robert F Ln.
West Olive, MI 49460

City of Muskegon
Attn: Frank Peterson
Title: City Manager
Email: frank.peterson@shorelinecity.com
Phone #:
Address: City of Muskegon
933 Terrace St.
Muskegon, MI 49440

XXIV. GENERAL PROVISIONS

A. Assignment. Neither Muskegon nor Operator will assign this Agreement, transfer, or otherwise sublet any part of the Services without the expressed written consent of the other, and such consent will not be unreasonably withheld.

B. Binding Effect. All provisions of this Agreement, including the benefits and burdens, will extend to and be binding upon the Parties respective heirs, legal representatives, successors, and assigns.

C. Caption. The captions and headings in this Agreement are for convenience of reference only and will not be used to interpret, define, or limit its provisions.

D. Counterparts. This Agreement may be executed in multiple identical counterparts, all of which will constitute one agreement.

E. Entire Understanding. This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings—oral or written—are merged herein. Prior or contemporaneous additions, deletions, or other changes will not have any force or affect whatsoever, unless embodied herein.

F. Extinguishment and Replacement. This Agreement extinguishes and replaces any prior agreements between the Parties related to the services described herein upon the Effective Date.

G. Modification. Modifications of this Agreement will not be effective unless agreed to in writing by the Parties in a formal written amendment to this Agreement, properly executed and approved by all the Parties.

H. Independent Counsel—Costs. The Parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. Each Party acknowledges that in executing this Agreement it has relied solely on its own judgment, belief and knowledge, and such advice as it may have received from its own counsel, and that it has not been influenced by any representation or statement made by the other Party or such Party's Affiliates, including its counsel. Each Party will pay its own fees and expenses incurred in connection with the negotiation, drafting and execution of this Agreement, and in respect of the transactions contemplated by this Agreement (including, without limitation, attorney's fees, and costs).

I. Interpretation. The language in all parts of this Agreement will in all cases be construed simply according to its fair meaning and not strictly construed against any Party. This Agreement will be construed, and performance thereof will be determined in accordance with the laws of the State of Michigan.

J. Waiver. No waiver of any provision of this Agreement will be effective unless the same will be in writing and signed by the Party making such waiver, and any such waiver will apply only to the specific occasion which is the subject of such waiver or consent and will not apply to the occurrence of the same or any similar event on any future occasion. No delay express waiver of any provision of this Agreement will be deemed to be or will constitute a waiver of any other provision whether or not similar, and no waiver will constitute a continuing waiver. Any delay in enforcement of any provision hereof will not constitute a waiver thereof.

K. Registration. During the term of this Agreement, Operator will be registered as a business in good standing with the State of Michigan and be a recognized business entity authorized to transact business in the State.

L. Severability. The invalidity or unenforceability of any provision of this Agreement or the agreement documents will not affect the validity or enforceability of any other provision, which will remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Terms. Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after expiration or termination will survive such expiration or termination and will be enforceable by Muskegon if Operator fails to perform or comply as required.

N. No Third-Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive because of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

O. Public Records. All information in this Agreement, or related to this Agreement, is subject to the provisions of the Freedom of Information Act 1976 no. 442, as amended, MCL 15.321, or latest revision thereof.

P. Attorney's Fees. Each Party shall be responsible for their legal fees resulting from the enforcement of this Agreement or any rights under this Agreement.

XXV. RELATIONSHIP

The Parties agree that the Operator is an independent contractor. To that end, the Operator will determine the method, details, and means of performing the work, but will comply with all legal requirements in doing so. The Operator will provide its own tools, materials, or equipment. The Parties agree that neither the Operator nor its principal is an employee of Muskegon or any of its departments, agencies, or related entities. The Parties also agree that neither the Operator nor its principal is entitled to any employee benefits from Muskegon. Operator understands and agrees that it and its principal have no right to claim any benefits under Muskegon's employee retirement system, a Muskegon 's worker's compensation benefits, health insurance, dental insurance, life insurance, or any other employee benefit plan offered by Muskegon.

XXVI. ATTACHMENTS

The following attachments are adopted, incorporated by reference, and made part of this Agreement:

Attachment A: Notice to Proceed with E-scooters and E-bikes
Attachment B: Key Performance Indicators
Attachment C: City of Muskegon Specific Area Conditions
Attachment D: User Fees
Attachment E: Certificate of Insurance
Attachment F: Approved locations for Shared-Mobility Devices and Shared-Mobility Services
Attachment G: Map of Furnished Facilities and Scope of Facility Use

The Parties have signed this Agreement as of the Effective Date.

CITY OF MUSKEGON

By:____
Frank Peterson
Its: City Manager

RIDE MUSKEGON, LLC

By: ____
Stephen Parent
Its: Member

By: ____
Terry Puffer
Its: Member

Doc ID: 4ed7f1fca465ccce5854357c88e21dc556566c29

ATTACHMENT A
Notice to Proceed with Program

NOTICE TO PROCEED
City of Muskegon

To: Ride Muskegon, LLC **Date:** _

Contract: Operating Agreement for electric bikes and scooters in the City of Muskegon

Project: Shared-Micro Mobility Project

Authorization: You are notified that, in accordance with the Operating Agreement dated _______, 2021, you are authorized by the City of Muskegon, MI to establish and commence an electric scooter program in the City of Muskegon exclusively, for the period of ten years (10), in accordance with the Operating Agreement entered into between the parties.

Program Start Date: __

Program End Date: __

By:____________________________
Name:
Its:

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

Ride Muskegon, LLC
a Michigan limited liability company

____
By: Stephen Parent
Its: Member

ATTACHMENT B
Key Performance Indicators

Key Performance Indicators *(EXAMPLE)*

Performance Indicator	Description	Measure Period	Measured Unit	Threshold
System Reporting	Monthly reports and limited Admin access provided.	Monthly/Annual	See below	See below
Device Availability	Number of devices available for use in a day relative to the number of bicycles in the system	Average monthly	E-bicycle E-scooter (if implemented)	200 200
Device Maintenance and Inspection	Number of devices receiving a weekly maintenance inspection	Monthly	% of devices in service	80%
Station Maintenance and Inspection	Stations receiving a cleaning and inspection	Twice per month, no more than 21 days between inspections	% of stations	80%
Device Response Time	Time to respond to reported deficient, damaged, or unclean station components of devices.	Any given point in time/monthly	Complaint response time.	12 hours
Website/Mobile App in Service	Percentage of time that the website and mobile app are in service	Any given point in time/ monthly	% of total minutes per month	99%
Customer Service Availability	Contractor will maintain a toll free customer service number from 8a-8p (live response), and a 24/7 after- hours service (message). Customer complaint and resolutions should be tracked through a system.	Any given point in time/monthly	Hours	95%
Customer Service Response Time	Response time between customer inquiry and complaint resolution plan	Any given point in time/monthly	Complaint acknowledgement response time. Resolution plan response time. Measured in hours.	24 hours or less
Device Distribution	See below	See below	See below	See below

Redistribution. CATMA will work with Gotcha to identify High Priority Areas based on station usage per day and peak times of usage. Distribution will be critically timed to increase the probability that each High Priority Area has sufficient bicycles available. Prior to the full launch, Respondent and the CATMA will agree to designate High Priority Areas. Additionally, Gotcha and the CATMA will agree to allocate a set minimum of the total bicycle fleet to the various priority areas specified at peak days and hours.

THIS IS AN EXAMPLE

ATTACHMENT C

City of Muskegon Location Specific Conditions

City of Muskegon Specific Conditions Use and Operation *(EXAMPLE)*

Waterfront and Greenway. Operator will ensure that the speed limit for the electronic assistance function of all Shared-Mobility Devices supplied under this Agreement will be limited to no more than the (10) miles per hour when a Shared-Mobility Device is being used within the Burlington Waterfront or on the Burlington Greenway.

Church Street Marketplace. Operator will ensure that the electronic assist function of any Shared-Mobility Device operating on the Church Street Marketplace is automatically disabled once the Shared-Mobility Device enters the Church Street Marketplace.

Operator will provide signs at the Waterfront Greenway docking stations that say, at a minimum, “The motor on these bikes will cease to operate outside of the bike-share system limits, and therefore will not be operational on the Causeway.

Prior to expiration of the initial term and 60 days prior to possible renewal, Operator will provide the City a statement detailing its efforts to integrate escalated pricing into its fee structure, including whether or when escalated pricing will be included as a feature. The City reiterates to Operator that this is an important feature and will be evaluated as one condition of renewal.

THIS IS AN EXAMPLE

ATTACHMENT D

User Fees for Initial Launch

User Fees for Initial Launch *(EXAMPLE)*

The following fee schedule is reflective of the initial fees to charge Users decided by the parties and are subject to change from time to time upon mutual agreement of the Parties.

Pay as You Go	$2 to unlock, $.10/min
Monthly Ride Muskegon-Pass:	$9.99 (20 minutes per unlock, $.10/min after)
Annual Ride Muskegon-Pass:	$79.99 (20 minutes per unlock, $.10/min after)
Annual Subsidized-Pass:	$5 monthly (30 min per unlock, then $.05/min after) Payable w/o need of mobile device

*All pricing reflects use of e-bicycles only
**Free ride time is the first 20 minutes per unlock

THIS IS AN EXAMPLE

ATTACHMENT E

Certificate of Insurance

ATTACHMENT F

Approved Locations for Shared-Mobility Devices and Services

ATTACHMENT G

Map of Furnished Facilities and Scope of Facility Use

HELLOSIGN

Audit Trail

TITLE	City of Muskegon Document
FILE NAME	Operating Agreement - final.pdf
DOCUMENT ID	4ed7f1fca465ccce5854357c88e21dc556566c29
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	Completed

Document History

SENT	**09 / 27 / 2021** 16:33:27 UTC	Sent for signature to Stephen Parent (stephen@ridemuskegon.com) and Terry Puffer (terry@ridemuskegon.com) from stephen@westmichigank9.com IP: 47.225.48.40
VIEWED	**09 / 27 / 2021** 16:34:40 UTC	Viewed by Stephen Parent (stephen@ridemuskegon.com) IP: 47.225.48.40
SIGNED	**09 / 27 / 2021** 16:35:04 UTC	Signed by Stephen Parent (stephen@ridemuskegon.com) IP: 47.225.48.40
VIEWED	**09 / 27 / 2021** 16:36:04 UTC	Viewed by Terry Puffer (terry@ridemuskegon.com) IP: 73.161.137.70
SIGNED	**09 / 27 / 2021** 16:36:55 UTC	Signed by Terry Puffer (terry@ridemuskegon.com) IP: 73.161.137.70
COMPLETED	**09 / 27 / 2021** 16:36:55 UTC	The document has been completed.

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 10/12/21	Title: West Urban Properties PILOT Agreement Progress Report and Phase II Authorization
Submitted By: Frank Peterson	Department: City Manager

Brief Summary: Dave Dusendang with West Urban Properties has prepared a progress report on the first phase of the City's PILOT rental unit development agreement with his firm. He is requesting authorization to proceed with the second phase of the agreement, which includes 25 additional rental units.

Detailed Summary: Mr. Dusendang has prepared an attached report that illustrates the current construction progress, lease-up status, and percent of Muskegon County AMI each unit's occupier represents. For the sake of privacy, the incomes are anonymized and the addresses are not printed with the associated household. West Urban is proposing to continue the arrangement as described in the original agreement by proceeding with 25 additional builds on pre-approved city owned lots.

Amount Requested: $0	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A

Recommended Motion: Motion to authorize West Urban Properties to proceed with construction of an additional 25 housing units on pre-approved city owned lots pursuant to the PILOT Agreement.

For City Clerk Use Only:

Commission Action:

West Urban Properties LLC

and

City of Muskegon

Pilot Development Agreement

Phase 1 of 4 Report

Phase 1 Report Summary
Effective of 10-7-2021

#	Address	# of Person	Annual Income	AMI %
1	Property #1	4	$ 72,000.00	113%
2	Property #2	4	$ 44,782.68	70%
3	Property #3	4	$ 50,121.60	99%
4	Property #4	2	$ 46,101.00	90%
5	Property #5	no tenant		
6	Property #6	1	$ 49,005.84	110%
7	Property #7	3	$ 114,070.92	Above 120 %
8	Property #8	3	$ 51,720.00	90%
9	Property #9	1	$ 55,992.00	Above 120 %
10	Property #10	4	$ 58,356.00	91%
11	Property #11	5	$ 55,260.00	80%
12	Property #12	1	$ 83,505.12	Above 120 %
13	Property #13	2	$ 72,000.00	Above 120 %
14	Property #14	4	$ 100,000.00	Above 120 %
15	Property #15	2	$ 294,000.00	Above 120 %
16	Property #16	3	$ 51,200.00	90%
17	Property #17	1	$ 100,000.00	Above 120 %
18	Property #18	5	$ 68,985.00	100%
19	Property #19	under construction		
20	Property #20	under construction		
21	Property #21	under construction		
22	Property #22	under construction		
23	Property #23	under construction		
24	Property #24	under construction		
25	Property #25	under construction		
26	Property #26	under construction		

Currently, 65% of the occupied units are between 70% and 120% AMI as defined in the supporting document Michigan State Housing Development Authority (MSHDA) Effective May 1, 2020.

%	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
70%	$ 31,333.33	$ 35,800.00	$ 40,266.67	$ 44,716.67	$ 48,316.67	$ 51,900.00	$ 55,483.33	$ 59,066.67
80%	$ 35,800.00	$ 40,900.00	$ 46,000.00	$ 51,100.00	$ 55,200.00	$ 59,300.00	$ 63,400.00	$ 67,500.00
90%	$ 40,266.67	$ 46,000.00	$ 51,733.33	$ 57,483.33	$ 62,083.33	$ 66,700.00	$ 71,316.67	$ 75,933.33
100%	$ 44,733.33	$ 51,100.00	$ 57,466.67	$ 63,866.67	$ 68,966.67	$ 74,100.00	$ 79,233.33	$ 84,366.67
110%	$ 49,200.00	$ 56,200.00	$ 63,200.00	$ 70,250.00	$ 75,850.00	$ 81,500.00	$ 87,150.00	$ 92,800.00
120%	$ 53,666.66	$ 61,300.00	$ 68,933.33	$ 76,633.33	$ 82,733.33	$ 88,900.00	$ 95,066.66	$ 101,233.33

<u>PILOT DEVELOPMENT AGREEMENT</u>

THIS PILOT DEVELOPMENT AGREEMENT (the "**Agreement**") is made on the 1st day of November, 2020, by and between the CITY OF MUSKEGON, a Michigan municipal corporation, whose address is 933 Terrace Street, Muskegon, Michigan 49440 (the "**City**") and West Urban Properties, LLC, a Michigan limited liability company, whose address is 3265 Walker Avenue, Suite D, Grand Rapids, Michigan, 49544 (the "**Developer**").

RECITALS

A. Pursuant to P.A. 381 of 1996, as amended, ("**Act 381**"), the Muskegon Brownfield Authority adopted a brownfield plan (the "**Brownfield Plan**") to add numerous vacant properties, as specified on attached Exhibit A (the "**Property**").

B. The Property is included in the City's Scattered Site Brownfield Project, as amended by the Muskegon Brownfield Redevelopment Authority on July 14, 2020.

C. The Developer intends to redevelop the Property into a <u>100-unit scattered site residential rental neighborhood</u> where no less than 40% of the units are allocated to tenants with income levels between 70% and 120% of the Area Median Income (AMI), as defined by the Michigan State Housing Development Authority (the "**Project**").

NOW, THEREFORE, the parties agree as follows:

1. Project Completion.

a. Developer agrees to purchase the Property described in attached Exhibit A.

i. The Developer will be responsible for all survey work associated with lot line adjustments, except that City shall be responsible for all costs, including costs associated with any necessary survey to create tax parcels.

ii. City will waive or pay for all water and sewer connection fees. Developer shall be responsible for all other fees, specifically including mechanical, plumbing, electrical, and any other construction and building permit fees.

b. Operating Incentive. In exchange for the Developer's commitment to allocate 40% of the units to be rented by individuals with income levels between 70% and 120% of Area Median Income, as defined by the Michigan State Housing Development Authority, the City agrees to provide an operating incentive to ensure such affordability as provided in Paragraph 3.

2. Rental Rates.

The Developer shall be responsible for verifying tenant income to ensure his/her qualifications for any income-restricted units. An income-qualified tenant's rent shall be set to follow the RENT LIMITS established annually by the Michigan State Housing Development Authority (MSHDA) for a Muskegon County family earning between 70% and 120% of AMI and renting a 1-3-bedroom home. The Developer is not obligated to rent any units below the 70% RENT LIMIT, regardless of the tenant's verified income level. Exhibit C of this Agreement demonstrates the initial rent limits as established by MSHDA in April 2020.

3. Shared Rental Benefit.

a. As an incentive to assist moderate income renters, the Developer may from time to time rent units at a rental rate below $1,300 per month. In the event the developer rents a unit to an income-qualified resident for less than $1,300 per month, the City will reimburse the Developer as follows:

i. If the rental rate is between $1,050 and $1,300, City will reimburse the Developer the difference between the rental rate and $1,300; and

ii. If the rental rate is below $1,050, the City will pay $250 to Developer plus 50% of the difference between the rental rate and $1,050.

As an incentive to attract market rate renters, the Developer may from time to time rent units at a rental rate above $1,300 per month. In the event the developer rents a unit to a tenant for more than $1,550 per month, the Developer will remit to the city 50% of the difference between the actual rental rate and $1,550 per month.

b. City shall establish the "West Urban Properties Rental Subsidy Fund". The City shall deposit $250,000 from the City of Muskegon Economic Development Revolving Loan Fund, which was created in part by a gift from Sappi Paper Company when the company ceased operations for economic development. All monies owed to the Developer by City pursuant to Paragraph 3(a) shall be paid from the West Urban Properties Rental Subsidy Fund and all monies owed by the Developer to the City pursuant to Paragraph 3(a) shall be credited to the West Urban Properties Rental Subsidy Fund. On a quarterly basis, Developer shall provide documentation, to City's satisfaction, as to the amount City owes Developer and/or Developer owes City pursuant to Paragraph 3(a). Upon termination of this Pilot Development Agreement, all monies left in the

West Urban Properties Rental Subsidy Fund shall revert to the City of Muskegon Economic Development Revolving Loan Fund for economic development, and any amounts owed to the Developer shall be waived. City shall have no obligation to reimburse Developer for any reason from any other City fund.

4. Vacancy Assistance.

During the first 30 days after completion of a home with a certificate of occupancy, the Developer shall be responsible for any vacancy losses. After the 30-day holding period and during the first 12 months of the completion of a home with a certificate of occupancy, the City will reimburse the Developer $1,300 per month while the unit is owned by Developer and vacant. Any monies owed by City shall be taken from the Fund established in Paragraph 3(b) and from no other source of City monies. Any unit that remains vacant for more than three months must be listed on the MLS at a price not more than 110% of cost to construct, which will be accepted by Developer. Failure to list the property for sale at not more than 110% of the cost to construct shall render the City's obligation to provide vacancy assistance invalid. If the provisions of this Paragraph are not exercised by Developer, then City shall have the right to terminate this Agreement as to any building not under construction at the time the City provided notice of its intent to terminate this Agreement pursuant to this Paragraph. Both parties agree that a building will be considered under construction only after the foundation and/or building slab is in place.

5. Renter Opportunity to Purchase.

With a 60-day written notice from any Tenant to the Landlord. Tenant shall have the option to purchase their occupied Leased Premises at the current appraised value plus any subsidy paid from the West Urban Properties Rental Subsidy Fund for that unit, unless that value is less than the original cost to build the residential dwelling.

6. Property Taxes.

In the event that the State Equalized Values (SEV) assigned to properties by the City Assessor at the completion of a phase results in an initial annual property tax bill in excess of $2,325 per unit, parties agree to amend Section 3(a) of this Pilot Agreement to offset the increased property tax burden. Annually, beginning January 1, 2022, the $2,325 maximum per unit average shall increase or decrease with the Consumers Price Index regularly used by the Muskegon City Assessor.

7. Term of Agreement.

a. The Developer's and City's obligations under this Agreement for any individual parcel shall terminate 20 years from the issuance of the original certificate of occupancy or upon a sale of the parcel that results in an uncapping of the Property's Taxable Value, but never after January 1, 2045 (the "**Term**").

b. This 100-unit Pilot shall be completed in 4 phases of 25 home increments. The Developer and City agree to meet upon the completion of each phase to discuss the performance of the prior phase before proceeding onto the next phase. At that time, if either party is dissatisfied with the performance of the phase, the upcoming phase may be postponed for up to 12 months by providing written notice.

c. If Developer is not constructing units on the Property for a 12-month period, as evidenced by the failure to pull permits and complete construction in a timely manner, the Pilot

Development Agreement shall terminate, after Notice as required by Paragraph 8, as to Parcels where Developer is not pursuing construction.

d. Should any court of competent jurisdiction find any portion of the Pilot Development Agreement void and/or prohibits City from funding any obligation provided in this Pilot Development Agreement, either City or Developer may terminate this Pilot Development Agreement with no consequences from the other party.

8. Notices.

All notices, payments, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served effective on the second (2nd) business day after being deposited in the United States mail, postpaid and registered or certified with return receipt requested; or when sent by private courier service for same-day delivery or one day after being sent by private courier service for next-day delivery. Notices shall also be sent via e-mail and to the respective addresses set forth below:

To Seller:	THE CITY OF MUSKEGON Attn: City Manager 933 Terrace St. Muskegon, MI 49440
With copy to:	Parmenter Law P.O. Box 786 Muskegon, MI 49443-0786

To Purchaser: WEST URBAN PROPERTIES, LLC

Attn: Dave Dusendang

3265 Walker Avenue, Suite D,

Grand Rapids, Michigan, 49544

9. Assignment.

Developer and City shall have the right to assign all of its rights and delegate all of its obligations under this Agreement to either an existing or a newly created entity, provided however, that no assignment shall operate as a release of that party without the written consent of the other, where consent may be withheld in such other party's sole discretion.

10. Arbitration.

Any and all disputes, controversies, or claims arising out of, or in connection with or relating to this Agreement, or any breach or alleged breach thereof, shall, on the request of either party, be submitted to and settled by arbitration in the State of Michigan pursuant to the rules, then in effect, of the American Arbitration Association (or at any other place or under any other form of arbitration mutually acceptable to the parties involved). This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. Notice of the demand for arbitration shall be filed, in writing, within a reasonable time after the claim, dispute, or other matter in question that arose where the party asserting the claim should have been reasonably aware of it, but in no event later than the applicable Michigan statute of limitations. Cost of arbitration shall be shared equally by the parties, provided that each party shall pay for and bear the cost of his or her own experts, evidence, and attorney fees. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction to do so.

11. Entire Agreement.

This Agreement supersedes all agreements previously made between the parties relating to the subject matter. There are no other understandings or agreements between them.

12. Non-Waiver.

No delay or failure by any party to exercise any right under this Agreement, and no partial or single exercise of that right, constitutes a waiver of that or any other right, unless otherwise expressly provided herein.

13. Headings.

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

14. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan.

15. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16. Binding Effect.

The provisions of this Agreement shall be binding upon and inure to the benefit of all the parties and their respective heirs, legal representatives, successors and assigns.

The parties have executed this Agreement on the date set forth above.

CITY OF MUSKEGON

By:_______________________

Its: City Manager

WEST URBAN PROPERTIES, LLC

By: David W. Dusendang

Its: MEMBER

EXHIBIT A
TO DEVELOPMENT AGREEMENT
DESCRIPTION OF ALL PARCELS SUBJECT TO THIS AGREEMENT

Address
1246 5th St
1252 5th St
1245 5th St
1261 5th St
1342 6th St
1349 6th St (2 lots)
1352 6th St (2 lots)
1411 6th St
1387 7th St (2 lots)
395 Houston Ave (2 lots)
275 Mason Ave (2 lots)
346 Mason Ave (2 lots)
352 Mason Ave
219 Merrill Ave
271 Merrill Ave (2 lots)
388 Merrill Ave (2 lots)
235 Monroe Ave
239 Monroe Ave
240 Monroe Ave
250 Monroe Ave
254 Monroe Ave
398 Monroe Ave
1392 Park St
382 W Muskegon Ave
487 W Muskegon Ave
420 Washington Ave (2 lots)
459 Washington Ave (3 lots)
1782 5th St (2 lots)
318 W Larch Ave (2 lots)
324 W Larch Ave
1686 7th St (2 lots)
1660 7th (2 lots)
408 W Dale Ave
340 W Forest Ave
1639 5th St

1605 Sanford St (2 lots)
487 W Southern Ave (2 lots)
305 W Grand Ave
1535 6th St
1542 7th St
355 W Grand Ave
337 W Grand Ave
1458 6th St
1464 6th St
0 Washington Ave
242 Strong Ave
1360 7th St
1366 7th St
1262 6th St
579 W Muskegon Ave
0 W Muskegon Ave
617 W Muskegon Ave
1047 Ambrosia St (7 lots)
1075 Ambrosia St(6 lots)
1155 Ambrosia St(6 lots)
1205 Ambrosia St(6 lots)
1386 Ransom St
1530 Hoyt St
292 Mason Ave
254 W Southern Ave
1670 Park St
1772 5th St
1227 Fleming Ave
553 Jackson Ave (3 lots)
579 Jackson Ave
601 Jackson Ave
621 Jackson Ave
558 Jackson Ave (2 lots)
608 Jackson Ave
445 Marquette Ave
527 Herrick St

530 Herrick St
270 Meeking St
329 Leonard Ave
366 Bennett St.
1251 8^{th} Street

EXHIBIT B
TO DEVELOPMENT AGREEMENT

PARCEL PURCHASE AGREEMENT

This PARCEL PURCHASE AGREEMENT (this "Agreement") is made on the 1st day of November, 2020, by and between WEST URBAN PROPERTIES, LLC, a Michigan limited liability company of 3265 Walker Avenue, Suite D, Grand Rapids, Michigan, 49544 ("Purchaser") and THE CITY OF MUSKEGON, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 ("Seller") as follows:

BACKGROUND

Purchaser and Seller entered into a Development Agreement which contemplates that Purchaser will purchase up to 100 separate parcels of land. The parcels are located in the City of Muskegon, Muskegon County, Michigan, and are depicted on the attached Exhibit A.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN THE PARTIES AGREE AS FOLLOWS:

1. Phase Parcels. Seller agrees to sell and Purchaser agrees to Purchase the parcels, as depicted on the attached Exhibit A. The precise description of each project and any individual building sites within each property will be agreed upon by the parties prior to closing, as contemplated by the Development Agreement.

2. Purchase Price. The Purchase Price shall be one dollar ($1.00) for each parcel. The Purchase Price shall be delivered at Closing in immediately available funds subject to the terms and conditions stated in this Agreement. The Purchaser's obligations under this Agreement are not contingent upon financing.

3. Investigation Period; Right to Terminate. The "Investigation Period" shall expire ninety (90) days following the date this Parcel Purchase Agreement has been executed by both parties (the "Effective Date"). During the Investigation Period, Purchaser shall have the right to have the Parcel inspected, surveyed, evaluated, analyzed, tested, appraised and/or assessed for any matter whatsoever, including but not limited to, market value; soil conditions; location of flood plains; presence of wetland and necessary mitigation, if any; storm water drainage systems; presence of environmental contamination; health and safety conditions; access to utilities; access to public roads; zoning; entitlement; compliance with laws, codes and ordinances and any other matter desired by Purchaser. Seller hereby grants Purchaser and Purchaser's agents, employees, representatives, consultants, and contractors a nonexclusive license during the term of this Agreement, to enter and have access to the Parcel for purposes of having such investigations performed and the right to discuss the Parcel and the conditions related thereto with governmental authorities. During the Investigation Period, and any extensions thereof, Purchaser has sole discretion to terminate this Agreement. All investigations, testing, and

inspections by Purchaser shall be at Purchaser's sole cost and expense. Any permits or permitting requested or required by Purchaser shall be at Purchaser's sole cost and expense, and at Purchaser's sole risk. Purchaser may extend the Investigation Period for up to an additional ninety (90) days if Purchaser in good faith decides to do so based on information learned during the Investigation Period. The Parcels shall be returned to the condition of the Parcels as of the date of the Pilot Development Agreement.

4. Payment of Property Taxes. Purchaser shall have no obligation to pay any amount for Property taxes that may have been assessed through the date of closing.

5. Closing Deadline; Schedule. The parties agree to schedule closings at the earliest possible time following the latter end of the Investigation Period, or any extension thereof.

6. Seller's Closing Deliveries. At the Closing, Seller shall deliver to the Purchaser, the following items, which shall be in a form and substance satisfactory to Purchaser:

A. A Quit Claim Deed conveying to Purchaser Seller's interest to the Parcel, executed and acknowledged by Seller in recordable form. The Quit Claim Deed shall include a covenant as to the use of the Parcels and the income and rental limitations provided in the Pilot Development Agreement;

B. Such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Seller.

7. Purchaser's Closing Deliveries. At Closing, Purchaser shall deliver to Seller: a) approved building plans and permits for the Parcel; b) the Purchase Price; and c) such other documents, including a signed Closing Statement, as are necessary and appropriate for the consummation of this transaction by Purchaser.

8. Special Assessments. Seller and Buyer acknowledge that the Parcels are subject to Special Assessments as listed on Exhibit B.

9. Title. It is Purchaser's obligation, at its expense, to order a commitment for an owner's policy of title insurance for each Parcel from Transnation Title, 570 Seminole Road, Muskegon, Michigan (the "Title Policy") within ten (10) days of the date of this Agreement. If Purchaser has any objections to matters disclosed in the title commitment, Purchaser has the right to terminate this Agreement without further obligation.

10. Representations and Warranties of Seller. Seller, which is limited to the personal knowledge of Frank Peterson, the City Manager, hereby represents and warrants to Purchaser that to the best of Seller's knowledge, as of the date hereof and on the date of Closing, which representations and warranties shall survive Closing, but without additional investigation by Seller:

A. Seller has the right, power and authority to enter into this Agreement and to sell the Parcel in accordance with the terms hereof, and Seller has granted no option or right of first refusal to any other person or entity to purchase the Parcel and has not entered into any contract to sell the Parcel as of the date of the Agreement. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Seller are and shall be duly authorized to sign the same on Seller's behalf and to bind Seller thereto.

B. Except as disclosed in the writing to Purchaser by Seller, Seller has not received any notice of, and has no knowledge within the past ten (10) years, of existing violations on the Parcel or any portion thereof of any zoning, building, fire, health, pollution, environmental protection, hazardous or toxic substance or waste disposal law or ordinance.

C. At the Closing, there will be no parties in possession of the Parcels or entitled to possession thereof other than Seller. There will be no leases, agreements, options or other instruments or agreements in effect with respect to the Parcel.

D. There are no existing or pending condemnations or sales in lieu thereof with respect to the Parcel, or any part thereof, nor have any such actions, suits, proceedings or claims been threatened or asserted.

E. There are no delinquent assessments. Current assessments with obligations to make future assessment payments are disclosed on Exhibit B.

F. There is no litigation, proceeding or investigation pending or, to Seller's knowledge, threatened against or involving Seller or the Parcel, and Seller does not know or have reason to know of any grounds as to the sale of the Parcels for any such litigation, proceeding or investigation, which could have an adverse impact on Purchaser or Purchaser's title to or use of the Parcel, either before or after Closing. No such warranty is made as to the proposed Rental Subsidy.

G. Seller has not received any notice of assessment or proposed assessment in connection with the Parcel, except as disclosed in Exhibit B.

H. Seller is not a "foreign person" as that term is defined in section 1445 of the Internal Revenue Code of 1986, as amended.

I. Except as set forth in documents provided by Seller to Purchaser, the Parcels and Seller are in full compliance with all requirements of federal, state and local environmental, health or safety laws, regulations and administrative or judicial decrees, as amended (the "Environmental Laws").

J. With the exception of the documents available in the public domain and the documents provided by Seller to the Purchaser, there are no reports, studies, appraisals, engineering reports, agreements with governmental authorities, wetland studies or reports, flood plain studies or reports related to the Parcel of which Seller is aware of within the last ten (10) years, or that are in Seller's possession or control.

11. Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to Seller, which representations and warranties shall survive Closing, that as of the date hereof, and on the date of Closing:

A. Purchaser has the full power and authority to execute, deliver and perform this Agreement and all of Purchaser's obligations under this Agreement; and

B. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of Purchaser are and shall be duly authorized to sign the same on Purchaser's behalf and to bind Purchaser thereto.

12. Indemnification. Purchaser agrees to indemnify and hold Seller and its managers, members, successors and assigns and their members, managers and representatives (the "Seller Group") harmless from and against any and all liabilities, claims, demands, and expenses, of any kind or nature, including but not limited to, all expenses related thereto, including, without limitation, court costs and attorney's fees for matters (i) arising or accruing after the Closing and which are in any way related to Purchaser's ownership, maintenance, or operation of the Parcel; and/or (ii) arising from or related to the inaccuracy or breach of any of Purchaser's representations and warranties. It is expressly stipulated and agreed that the provisions of this Section shall survive the Closing.

13. Default and Remedies.

A. Purchaser's Default; Seller's Remedy. If the Purchaser fails to close on the purchase of the Parcel, Seller may, as its sole and exclusive remedy, terminate this Agreement by giving an appropriate Notice of Default as provided below. If Purchaser agrees to close on some but not all of the Parcels, the obligations in the Pilot Development Agreement shall be reduced on a prorate basis.

B. Seller's Default; Purchaser's Remedy. If the Seller fails to close on the purchase of the Parcel, Purchaser may, as its sole and exclusive remedy, terminate this Agreement by giving an appropriate Notice of Default as provided below.

C. Notice of Default. In the event either party declares the other to be in default, such declaration shall be in writing, with an outline of the actions required to cure such default. The recipient of such notice of default shall have 15 days to cure the alleged default.

14. This Paragraph is intentionally left blank.

15. Sale and Assignment of Agreement. Purchaser and City shall have the right to assign all of its rights and delegate all of its obligations under this Agreement to either an existing or a newly created entity, provided however, that no assignment shall operate as a release of that party without the written consent of the other, which consent may be withheld in such other party's sole discretion.

16. This Paragraph is intentionally left blank.

17. Miscellaneous.

A. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

B. This Agreement shall be governed by and construed under the laws of the State of Michigan.

C. This Agreement supersedes all prior discussions and agreements between Seller and Purchaser with respect to the conveyance of the Parcel and all other matters contained herein and constitutes the sole and entire agreement between Seller and Purchaser with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and signed by both Seller and Purchaser.

D. All notices, payments, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served effective on the second (2nd) business day after being deposited in the United States mail, postpaid and registered or certified with return receipt requested; or when sent by private courier service for same-day delivery or one day after being sent by private courier service for next-day delivery. Notices shall also be sent via e-mail and to the respective addresses set forth below:

To Seller:	THE CITY OF MUSKEGON Attn: City Manager 933 Terrace St. Muskegon, MI 49440
With copy to:	Parmenter Law P.O. Box 786 Muskegon, MI 49443-0786
To Purchaser:	WEST URBAN PROPERTIES, LLC Attn: Dave Dusendang 3265 Walker Avenue, Suite D, Grand Rapids, Michigan, 49544

E. This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:
THE CITY OF MUSKEGON

By:____________________
Its: City Manager

PURCHASER:
WEST URBAN PROPERTIES, LLC

By: David D. Dusendang
Dave Dusendang
Its: MEMBER

EXHIBIT A

TO PURCHASE AGREEMENT

DESCRIPTION OF ALL PARCELS SUBJECT TO THIS AGREEMENT

Address
1246 5th St
1252 5th St
1245 5th St
1261 5th St
1342 6th St
1349 6th St (2 lots)
1352 6th St (2 lots)
1411 6th St
1387 7th St (2 lots)
395 Houston Ave (2 lots)
275 Mason Ave (2 lots)
346 Mason Ave (2 lots)
352 Mason Ave
219 Merrill Ave
271 Merrill Ave (2 lots)
388 Merrill Ave (2 lots)
235 Monroe Ave
239 Monroe Ave
240 Monroe Ave
250 Monroe Ave
254 Monroe Ave
398 Monroe Ave
1392 Park St
382 W Muskegon Ave
487 W Muskegon Ave
420 Washington Ave (2 lots)
459 Washington Ave (3 lots)
1782 5th St (2 lots)
318 W Larch Ave (2 lots)
324 W Larch Ave
1686 7th St (2 lots)
1660 7th (2 lots)
408 W Dale Ave
340 W Forest Ave
1639 5th St

1605 Sanford St (2 lots)
487 W Southern Ave (2 lots)
305 W Grand Ave
1535 6th St
1542 7th St
355 W Grand Ave
337 W Grand Ave
1458 6th St
1464 6th St
0 Washington Ave
242 Strong Ave
1360 7th St
1366 7th St
1262 6th St
579 W Muskegon Ave
0 W Muskegon Ave
617 W Muskegon Ave
1047 Ambrosia St (7 lots)
1075 Ambrosia St(6 lots)
1155 Ambrosia St(6 lots)
1205 Ambrosia St(6 lots)
1386 Ransom St
1530 Hoyt St
292 Mason Ave
254 W Southern Ave
1670 Park St
1772 5th St
1227 Fleming Ave
553 Jackson Ave (3 lots)
579 Jackson Ave
601 Jackson Ave
621 Jackson Ave
558 Jackson Ave (2 lots)
608 Jackson Ave
445 Marquette Ave
527 Herrick St

530 Herrick St
270 Meeking St
329 Leonard Ave
366 Bennett St.

EXHIBIT B

EXISTING SPECIAL ASSESSMENTS

EXHIBIT C

MSHDA 4/1/2020 INCOME AND RENT LIMITS

04/01/2020 INCOME AND RENT LIMITS

County: 61 Muskegon — **Effective Date: 4/1/2020**

Income	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
20%	8,960	10,240	11,520	12,780	13,820	14,840	15,860	16,880
25%	11,200	12,800	14,400	15,975	17,275	18,550	19,825	21,100
30%	13,440	15,360	17,280	19,170	20,730	22,260	23,790	25,320
35%	15,680	17,920	20,160	22,365	24,185	25,970	27,755	29,540
40%	17,920	20,480	23,040	25,560	27,640	29,680	31,720	33,760
45%	20,160	23,040	25,920	28,755	31,095	33,390	35,685	37,980
50%	22,400	25,600	28,800	31,950	34,550	37,100	39,650	42,200
55%	24,640	28,160	31,680	35,145	38,005	40,810	43,615	46,420
60%	26,880	30,720	34,560	38,340	41,460	44,520	47,580	50,640
70%	31,360	35,840	40,320	44,730	48,370	51,940	55,510	59,080
80%	35,840	40,960	46,080	51,120	55,280	59,360	63,440	67,520
100%	44,800	51,200	57,600	63,900	69,100	74,200	79,300	84,400
120%	53,760	61,440	69,120	76,680	82,920	89,040	95,160	101,280
125%	56,000	64,000	72,000	79,875	86,375	92,750	99,125	105,500
140%	62,720	71,680	80,640	89,460	96,740	103,880	111,020	118,160
150%	67,200	76,800	86,400	95,850	103,650	111,300	118,950	126,600

Rent By Person	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
20%	224	256	288	319	345	371	396	422
25%	280	320	360	399	431	463	495	527
30%	336	384	432	479	518	556	594	633
35%	392	448	504	559	604	649	693	738
40%	448	512	576	639	691	742	793	844
45%	504	576	648	718	777	834	892	949
50%	560	640	720	798	863	927	991	1,055
55%	616	704	792	878	950	1,020	1,090	1,160
60%	672	768	864	958	1,036	1,113	1,189	1,266
80%	896	1,024	1,152	1,278	1,382	1,484	1,586	1,688
100%	1,120	1,280	1,440	1,597	1,727	1,855	1,982	2,110
120%	1,344	1,536	1,728	1,917	2,073	2,226	2,379	2,532
125%	1,400	1,600	1,800	1,996	2,159	2,318	2,478	2,637
140%	1,568	1,792	2,016	2,236	2,418	2,597	2,775	2,954
150%	1,680	1,920	2,160	2,396	2,591	2,782	2,973	3,165

Rent By Bedroom	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom
20%	224	240	288	332	371	409
25%	280	300	360	415	463	511
30%	336	360	432	498	556	613
35%	392	420	504	581	649	716
40%	448	480	576	665	742	818
45%	504	540	648	748	834	920
50%	560	600	720	831	927	1,023
55%	616	660	792	914	1,020	1,125
60%	672	720	864	997	1,113	1,227
70%	784	840	1,008	1,163	1,298	1,432
80%	896	960	1,152	1,330	1,484	1,637
100%	1,120	1,200	1,440	1,662	1,855	2,046
120%	1,344	1,440	1,728	1,995	2,226	2,455
125%	1,400	1,500	1,800	2,078	2,318	2,557
140%	1,568	1,680	2,016	2,327	2,597	2,864
150%	1,680	1,800	2,160	2,493	2,782	3,069