

CITY OF MUSKEGON

CITY COMMISSION MEETING

OCTOBER 8, 2019 @ 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 AND AWARDS:**
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Resolution Authorizing Issuance of 2019 Capital Improvement Note Finance**
 - C. MDOT Maintenance Agreement** Public Works
 - D. Traffic Control Orders** Public Works
 - E. McCormick Sand – Change Order #001** Public Works
 - F. Park Storage Land Exchange** Development Services
 - G. Community Relations Committee Recommendations** City Clerk
- ☐ **PUBLIC HEARINGS:**
- ☐ **UNFINISHED BUSINESS:**
 - A. Recreational Marihuana Regulatory Ordinance – 2nd Reading** Planning
 - B. Amendment to the Medical Marihuana Facilities Overlay District to also allow Recreational Marihuana Facilities – 2nd Reading** Planning
- ☐ **NEW BUSINESS:**
- ☐ **ANY OTHER BUSINESS:**

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

- ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
- ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
- ▶ Submit the form to the City Clerk.
- ▶ Be recognized by the Chair.
- ▶ Step forward to the microphone.
- ▶ State name and address.
- ▶ Limit of 3 minutes to address the Commission.
- ▶ (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.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: October 3, 2019

Here is a quick outline of the items on our agendas:

Work Session:

1. After much discussion internally, with state officials, and with residents (via forums and a survey), staff is recommending that the Commission consider moving forward with a plan to reduce the deer population on the City's west side. DPW staff will be in attendance to discuss our recommendations moving forward.
2. Economic development staff will be present to present their plan for tax incentives going forward.
3. We will present our initial idea for social equity related to adult-use marihuana.
4. LeighAnn Mikesell will present the 4th chapter in Suburban Nation.
5. Resolution presented by Commissioner German related to concerns with gun violence.

Regular Session:

1. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. Finance Department is seeking approval of the Resolution to issue 2019 Capital Improvement Bonds for Midtown Square 2.
 - c. Public Works is seeking approval of an updated contract with MDOT for maintenance of State Trunklines.
 - d. We are seeking approval to move four intersections to 4-way stops, including two on Houston, as requested by residents.
 - e. We are seeking a change order to the contract with McCormick Sand.
 - f. We are seeking approval to complete the land exchange with Catholic Charities as discussed at last month's general session.
2. Under Unfinished Business, we are asking the Commission to consider the following:
 - a. Second reading of the Recreational Marihuana Regulatory Ordinance
 - b. Second Reading of the Marihuana Overlay District

Let me know if you have any questions/comments/concerns



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 10/08/2019	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the September 24, 2019 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 MEETING

SEPTEMBER 24, 2019 @ 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 24, 2019, Pastor Leroy Lockhart, New Birth Ministries, opened the meeting with 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 Byron Turnquist, Ken Johnson, Debra Warren, Dan Rinsema-Sybenga, and Willie German, Jr., City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

PUBLIC COMMENT ON AGENDA ITEMS: Public comments were received.

2019-75 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the September 9, 2019 Worksession meeting and the September 10, 2019 Regular meeting.

STAFF RECOMMENDATION: Approval of the minutes.

B. Financial Policy Update City Treasurer

SUMMARY OF REQUEST: To update the Poverty Exemption Income Guidelines used to determine poverty tax exemptions.

In recent years, the State of Michigan has undertaken significant Property Assessing Reform in an effort to ensure high quality assessments for taxpayers and local units. One of the many reforms is a mandatory AMAR (Audit of Minimum Assessing Requirements) to be conducted every five years in each local unit. The local units in the County of Muskegon are scheduled to receive their AMAR in 2020.

As part of our efforts to ensure we are complying with all State requirements for the AMAR, we reviewed our Poverty Exemption Policy with our assessor of record, Donna VanderVries, and determined changes to the policy were necessary. On page 25 of the attached Financial Policies, in the Poverty Exemption Income Guidelines, the requirements of items 7) and 8) do not comply with state regulation and must be removed from the policy. Also, for item 2), we cannot require the taxpayer to provide the property tax credit regurns. The State Tax Tribunal has ruled that we cannot go above what the state statute dictates, and each of these requirements are considered to be beyond the limits of the statute.

On the advice of Muskegon County Equalization Director Donna VanderVries, we are requesting that you update item 2) and eliminate items 7) and 8) from the current Poverty Exemption Income Guidelines in the City's Financial Policies.

STAFF RECOMMENDATION: To approve the updated Poverty Exemption Income Guidelines in the City of Muskegon's Financial Policies as presented.

C. Equipment Replacement DPW/Equipment

SUMMARY OF REQUEST: The Equipment Division is requesting permission to purchase one Caterpillar Backhoe coming from Michigan CAT, the Mi Deal State Contract holder. This machine will replace one we are trading in.

Amount requested is \$109,290.05 less trade in of \$20,00.00 for our machine. Final price of \$89,290.05.

STAFF RECOMMENDATION: Authorize staff to purchase on Caterpillar backhoe for a final price of \$89,290.05.

E. Thermal Imaging Cameras (TIC) Public Safety/Fire Department

SUMMARY OF REQUEST: Seeking approval to purchase two (2) Avon Thermal Imaging Cameras (TIC) at a cost of \$10,060.00 and six (6) Seek units at a cost of \$3,957.50. The total cost of \$13,748.80 is below the approved 2019/2020 budgeted amount of \$14,096.00. Thermal Imaging Cameras are used to locate victims and hidden fires during fire-fighting efforts. The two (2) Avon TIC units will be placed on Engines 23 & 25. The six (6) personal size TIC units are to be worn by the firefighters.

STAFF RECOMMENDATION: To approve the purchase of eight (8) Thermal Imaging Cameras for Fire Department use in detection and rescue efforts for a total cost of \$13,748.80.

F. Melching – Change Order #005 Public Work

SUMMARY OF REQUEST: Melching Demolition has provided a proposal to crush all of the existing concrete and asphalt and leave it on site at the West Shoreline Correctional Facility. The crushed concrete and asphalt would be used by city crews performing maintenance work and for city funded public projects with

excess material to be sold.

Change Order #005 represents an approximately \$100,000 increase in the contract value with Melching. For this price Melching will crush all of the existing concrete and asphalt on site. Concrete will be crushed into popular gradations that can be used for city project, or sold to private developments. Asphalt will be crushed into millings for use on city projects, and/or to be sold for private developments. Payment for the contract increase will be made from the grant funds allocated towards this site. Any proceeds from sale of excess material are proposed to be deposited into the Local Street Fund to potentially be used to fund a future project.

STAFF RECOMMENDATION: Authorize staff to sign Change Order #005 to the demolition contract with Melching Demolition in the amount of \$101,250.

G. Water Filtration Plant – CE Contract Public Works

SUMMARY OF REQUEST: Consumers Energy has provided a contract relative to the water filtration plant that allows them to suspend electrical service to the water filtration plant under certain peak conditions at which time the water filtration plant will operate under generator power.

Consumers Energy retains the right to suspend electrical service to the water filtration plant under certain peak conditions and provided proper notice to the plant. These occurrences are limited to five (5) occurrences annually each not to exceed 4 hours. Consumers Energy will compensate the City for enrollment in this program. Staff has reviewed the contract and performed the necessary load testing of the plant to ensure compliance with the agreement. The contract has been reviewed by legal counsel. Staff is recommending the 4-year option, which includes an annual payment in the amount of \$28,000 per year to the city.

STAFF RECOMMENDATION: Authorize staff to sign the 2020 Emergency with Generator Commercial and Industrial Demand Response Customer Agreement with Consumers Energy for a period of 4 years.

J. Community Relations Committee Recommendations Clerk

SUMMARY OF REQUEST: Staff is seeking approval of the recommendations by the Community Relations Committee to accept the resignations of Scott Banninga from the CDBG/Citizen's District Council-Citizen representing Ward 2 and Clyde Whitehouse – Business Improvement District – Assessed property owner and to accept the appointment of Kathy Dennison to the Business Improvement District.

STAFF RECOMMENDATION: To concur with the recommendations of the Community Relations Committee and approve the resignations and appointment.

Motion by Commissioner Warren, second by Commissioner German, to accept the consent agenda, as presented, minus items D, H, and I.

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

Nays: None

MOTION PASSES

2019-76 ITEMS REMOVED FROM CONSENT AGENDA:

D. Development and Reimbursement Agreement, Midtown/Nelson Brownfield Economic Development

SUMMARY OF REQUEST: Approval of the Development and Reimbursement Agreement for the Midtown Square II and Nelson Neighborhood Infill Housing Brownfield between the city and its Brownfield Redevelopment Authority.

The Brownfield Plan Amendment for Midtown Square II and the Nelson Neighborhood Infill Housing was approved by the Authority on April 9, 2019. This agreement outlines how the Authority will reimburse the city for eligible costs in the construction of 20 housing units in the Nelson Neighborhood through future tax capture. The city will seek an approximately \$3 million commercial loan and have the residential units built by Dusendang Contractors. The city will receive reimbursement of 5 percent per annum for the cost of borrowing for an estimated total amount of \$302,406. The Muskegon Brownfield Redevelopment Authority approved the agreement at its September 10, 2019 meeting.

STAFF RECOMMENDATION: To approve the Midtown Square II and Nelson Neighborhood Infill Housing Development and Reimbursement Agreement and authorize the Mayor and City Clerk to sign the same.

Motion by Commissioner German, second by Commissioner Rinsema-Sybenga, to approve the Midtown Square II and Nelson Neighborhood Infill Housing Development and Reimbursement Agreement and authorize the mayor and city clerk to sign the same.

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

Nays: None

MOTION PASSES

H. Establish Policy and Application for Block Parties Planning

SUMMARY OF REQUEST: Staff is seeking to establish a policy, application, and fees to allow for block parties which close city streets. The goal is to encourage neighborhood cohesion while placing reasonable restrictions to ensure safety and minimize risk for complaints.

- Application Fee - \$50
 - o Application fee may be refunded if the application is denied by the city.
 - o Application fee will not be refunded if event is cancelled by the applicant.
- Cleaning Fee - \$60/hour (if required)
 - o Will be charged to the applicant after the event if city property is not returned to its original condition and/or trash is left on city property.

STAFF RECOMMENDATION: Approve the block party policy, application, and fees as proposed.

Motion by Commissioner Turnquist, second by Commissioner Rinsema-Sybenga, to approve the block party policy, application, and fees as proposed.

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

Nays: None

MOTION PASSES

I. Rezoning of 1713 7th Street Planning

SUMMARY OF REQUEST: Staff initiated request to rezone the property at 1713 7th Street from I-2, Heavy Industrial to B-4 General Business and MC, Medical Care. This area is categorized by many different uses. In addition to residential homes, the Rescue Mission, Norchuck Supply, Keene Lumber, a carpentry shop and other small businesses are located in the direct vicinity. Staff feels that downzoning from heavy industrial to general business is appropriate for this neighborhood.

The Planning Commission unanimously recommended approval at their September meeting.

STAFF RECOMMENDATION: To approve the rezoning from I-2, Heavy Industrial to B-4 General Business and MC, Medical Care.

Motion by Commissioner German, second by Commissioner Rinsema-Sybenga, to approve the rezoning from I-2, Heavy Industrial to B-4 General Business and MC, Medical Care.

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

Nays: None

MOTION PASSES

2019-77 PUBLIC HEARINGS:

A. CAPER 2018 Community & Neighborhood Services

SUMMARY OF REQUEST: Request to conduct a Public Hearing of the 2018 Consolidated Annual Performance Evaluation Report (CAPER) for projects funded with CDBG and HOME HUD Entitlements to the City of Muskegon, Community & Neighborhood Services Department.

STAFF RECOMMENDATION: To submit the 2018 CAPER including any public comments received during the 20 day comment period ending September 27, 2019.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to close the public hearing and submit the 2018 CAPER including any public comments received during the 20-day comment period ending September 27, 2019.

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

Nays: None

MOTION PASSES

2019-78 NEW BUSINESS:

A. Royal Glen Partnership City Manager

SUMMARY OF REQUEST: The owners of Royale Glen are requesting a five-year term extension and a 3 percentage point reduction in the annual PILOT Payments at Royale Glen Apartments. In exchange, the ownership group is committing to invest \$600,000 in apartment upgrades/improvements and \$156,000 for improvements at Campbell Field.

Campbell Field previously housed the West Little League Program. Over the past 20+ years, local participation in little league baseball has waned significantly. As a result, Campbell Field has only one field that is properly maintained by Muskegon Catholic Central, and three fields that are poorly maintained for the majority of the year. Staff is proposing that the three unmaintained fields be removed, and the space be reforested with appropriate trees. Additionally, the currently playground would be removed and replaced, and a walking trail would be added, connecting Royale Glen Apartments to the new playground. Royale Glen is home to many families with children that would benefit from additional access to the park as well as the upgrades to the rental units. We envision Campbell Field eventually functioning similarly to Seyferth Park. The park project would be at least partially financed by a \$156,000 contribution from Royale Glen Apartments. Any cost above that amount would be financed by the City's General Fund. The PILOT reduction is expected to cost the city

approximately \$5,500 annually. If this is agreeable to Commissioners, staff will begin engaging the neighborhood relative to their desires for the park.

STAFF RECOMMENDATION: To authorize staff to negotiate an amendment to the Royale Glen PILOT Agreement to include an extension to April 1, 2030, a 1% City Service Fee, 1% PILOT Fee, and a requirement to invest at least \$600,000 in capital maintenance at Royale Glen and at least \$156,000 in capital improvements at Campbell Field Park.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to authorize staff to negotiate an amendment to the Royale Glen PILOT Agreement to include an extension to April 1, 2030, a 1% City Service Fee, 1% PILOT Fee, and a requirement to invest at least \$600,000 in capital maintenance at Royale Glen and at least \$156,000 in capital improvements at Campbell Field Park.

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

Nays: Turnquist

MOTION PASSES

B. Construction Agreement – Clark City Manager

SUMMARY OF REQUEST: Staff is seeking authorization to enter into the construction management agreement with Clark Construction for the construction of the Downtown Convention Center. The Construction costs are \$17,203,211 which is on target with the latest engineer estimate and will keep the entire project within the current \$19.4 Million budget.

The convention center will be funded via a 30-year general obligation bond, which is expected to be issued in October. The annual payments, currently estimated at \$1,050,000 annually will be paid via the terms of a development agreement that sets aside hotel room revenues to meet the debt obligations. Staff is recommending that Clark not be obligated to obtain a performance bond as part of this project, as all subcontractors have completed background evaluations and staff is confident in their respective ability to perform.

STAFF RECOMMENDATION: To waive the performance bond requirements for the Convention Center Project, authorize the Construction Management Contract with Clark Construction in the amount of \$17,203,211, and authorize the Mayor to sign the contract.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Warren, to waive the performance bond requirements for the Convention Center Project, authorize the Construction Management Contract with Clark Construction in the amount of \$17,203,211, and authorize the Mayor to sign the contract.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Turnquist, Johnson, Gawron,

Hood, and Warren

Nays: None

MOTION PASSES

C. DDA On-Premise Liquor License for the LC Walker Arena Planning

SUMMARY OF REQUEST: To approve the Resolution for a Downtown Development Authority On-Premise Liquor License for the LC Walker Arena. The Liquor Control Commission allows for additional liquor licenses within Downtown Development Authority Districts under certain conditions.

This license would cover all alcohol sales within the arena; including Rad Dad's, Carlisle's and concessions.

STAFF RECOMMENDATION: To approve the DDA On-Premise Liquor License for the L.C. Walker Arena and authorize the Mayor and Clerk to sign the resolution.

Motion by Commissioner Warren, second by Commissioner Johnson, to approve the DDA On-Premise Liquor License for the L.C. Walker Arena and authorize the Mayor and Clerk to sign the resolution.

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

Nays: None

MOTION PASSES

D. Recreational Marihuana Regulatory Ordinance Planning

SUMMARY OF REQUEST: Staff initiated request to amend the City Code of Ordinances and adopt a Recreational Marihuana Regulatory Ordinance under the Michigan Regulation of Taxation of Marihuana Act.

STAFF RECOMMENDATION: To approve the Recreational Marihuana Regulatory Ordinance as part of the City Code of Ordinances.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to approve the Recreational Marihuana Regulatory Ordinance as part of the City Code of Ordinances.

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

Nays: Warren and German

MOTION PASSES

SECOND READING REQUIRED

E. Amendment to the Medical Marihuana Facilities Overlay District to also allow Recreational Marihuana facilities Planning

SUMMARY OF REQUEST: Staff initiated request to amend Section 2330 of the zoning ordinance, the Medical Marihuana Facilities Overlay District, to also allow for Recreational Marihuana facilities under the Michigan Regulation and Taxation of Marihuana Act.

Staff is proposing to amend the current Medical Marihuana Facilities Overlay District to also allow for Recreational Marihuana Facilities. The building and site requirements are essentially the same for recreational and medicinal facilities and they would be allowed within the same overlay district, as depicted on the map. The Planning Commission voted 7-1 in favor of recommending approval of the ordinance.

STAFF RECOMMENDATION: To approve the amendments to Section 2330 of the Zoning Ordinance to also allow for Recreational Marihuana Facilities.

Motion by Vice Mayor Hood, second by Commissioner Johnson, to approve the amendments to Section 2330 of the Zoning Ordinance to also allow for Recreational Marihuana Facilities.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, and Warren

Nays: German, Rinsema-Sybenga, and Turnquist

MOTION PASSES

SECOND READING REQUIRED

ANY OTHER BUSINESS: Comments received by Commissioners.

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

ADJOURNMENT: The City Commission meeting adjourned at 9:23 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: October 8, 2019	Title: Resolution Authorizing Issuance of 2019 Capital Improvement Note
Submitted By: Finance Director	Department: Finance
Brief Summary: Resolution authorizing a Capital Improvement Note to be issued in the aggregate principal sum of not to exceed \$3 million dollars for the purpose of paying the cost of the Scattered Housing Project, including the costs incidental to the issuance, sale and delivery of the note	
Detailed Summary: The note will be a single instrument note for \$3 million dollars with interest from the date such installment of principal is delivered to the City until paid at a variable rate of interest equal to the lesser of (i) the maximum annual rate permitted by law and (ii) a rate per annum equal to the 30 day LIBOR rate plus 1.25% adjusted on the first business of each month, first payable on December 1, 2019 and the first day of each month thereafter. The registered owner of the note will be Fifth Third Bank.	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the resolution authorizing a Capital Improvement Note to be issued not to exceed \$3 million dollars for the purpose of paying the cost of the Scattered Housing Project.	
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 AUTHORIZING ISSUANCE OF
2019 CAPITAL IMPROVEMENT NOTE
(LIMITED TAX GENERAL OBLIGATION)**

City of Muskegon
County of Muskegon, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, held on October 8, 2019, at 5:30 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member _____ and supported by Member _____:

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), intends to authorize the issuance and sale of its general obligation limited tax note pursuant to Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), to pay all or part of the cost of acquiring and constructing residential housing units located within the City for economic development purposes (the "Project"); and

WHEREAS, the City, published a notice of intent to issue a note in an amount not to exceed Three Million Dollars (\$3,000,000) for the Project (the "Notice"); and

WHEREAS, the Notice was published in accordance with Act 34, which provides that the capital improvement note may be issued without a vote of the electors of the City unless a proper petition for an election on the question of the issuance of the note is filed with the City Clerk within a period of forty-five (45) days from the date of publication and no petition was filed within said time; and

WHEREAS, the City determines that it is necessary and appropriate at this time to issue the capital improvement note (the "Note") pursuant to Act 34 in an amount not to exceed Three Million Dollars (\$3,000,000); and

WHEREAS, the City has received a proposal from Fifth Third Bank (the "Purchaser") to purchase the Note pursuant to a negotiated sale, which is attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Note; Note Terms, The Note of the City designated 2019 CAPITAL IMPROVEMENT NOTE (LIMITED TAX GENERAL OBLIGATION) (the "Note") is authorized to be issued in the aggregate principal sum of not to exceed Three Million Dollars (\$3,000,000) for the purpose of paying the costs of the Project, including the costs incidental to

the issuance, sale and delivery of the Note.

The issue shall consist of a single, fully-registered note in the principal amount of \$3,000,000, and shall be dated as of the date of delivery and payable at maturity, which shall be no more than 3 years from the closing date on the Notes. The principal of the Note may be prepaid on such dates and in such amounts as periodically determined by the City Manager or Finance Director (each, an "Authorized Officer"); *provided that*, the principal payments shall not exceed the total of the principal which has been advanced to the City up to a total of \$3,000,000; *provided further that*, the entire principal balance shall be paid in full at or prior to maturity of the Note.

The Note shall be subject to redemption in whole or in part in the manner and at any time prior to maturity to be determined by an Authorized Officer, at a price equal to 100% of the principal amount being redeemed plus accrued interest to the date fixed for redemption.

The Note shall bear interest at a variable rate equal to the lesser of (i) the maximum annual rate permitted by law and (ii) a rate per annum equal to the 30 day LIBOR rate plus 1.25%, adjusted on the first business day of each month, first payable on December 1, 2019 and the first day of each month thereafter, by check or draft mailed by the Transfer Agent (as hereinafter defined) to the registered owner of record as of the 15th day of the month prior to the payment date for each interest payment. The principal amount of the Note is expected to be drawn down by the City periodically, and interest on the principal amount shall accrue from the date such principal amount is drawn down by the City.

The record date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future. The principal of the Note shall be payable at the office of the Treasurer of the City, or a bank or trust company as a registrar and transfer agent for the Note to be selected by an Authorized Officer (the "Transfer Agent").

2. Execution of Note; Book-Entry-Only Form. The Note of this issue shall be executed in the name of the City with the manual or facsimile signatures of the Mayor and City Clerk and shall have the seal of the City, or a facsimile thereof, printed or impressed on the Note. No Note executed with facsimile signatures shall be valid until authenticated by an authorized officer or representative of the Transfer Agent.

3. Transfer of Note. The Transfer Agent shall keep the books of registration for this issue on behalf of the City. The Note may be transferred upon such registration books by the registered owner of record, in person or by the registered owner's duly authorized attorney, upon surrender of the Note for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever the Note shall be surrendered for transfer, the City shall execute and the Transfer Agent shall authenticate and deliver a new Note, for like aggregate principal amount. The Transfer Agent shall require the payment by the noteholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer.

4. Security for the Note; Limited Tax Pledge; Defeasance of Note. The City hereby pledges its limited tax full faith and credit for the prompt payment of the principal and interest on

the Note. The City shall, each year budget the amount of the debt service coming due in the next fiscal year on the principal of and interest on the Note and shall advance as a first budget obligation from its general funds available therefor, or, if necessary levy taxes upon all taxable property in the City subject to applicable constitutional, statutory and charter tax rate limitations, such sums as may be necessary to pay such debt service in said fiscal year.

The City Treasurer is authorized and directed to open a separate fund to be known as the 2019 CAPITAL IMPROVEMENT NOTE DEBT RETIREMENT FUND (the "Debt Retirement Fund"), the moneys to be deposited into the Debt Retirement Fund to be specifically earmarked and used solely for the purpose of paying principal of and interest on the Note as they mature. Into said fund there shall be placed the accrued interest, if any, received at the time of delivery of the Note.

In the event cash or direct obligations of the United States or obligations the principal of and interest on which are guaranteed by the United States, or a combination thereof, the principal of and interest on which, without reinvestment, come due at times and in amounts sufficient to pay at maturity or irrevocable call for earlier optional redemption, the principal of, premium, if any, and interest on the Note, shall be deposited in trust, this resolution shall be defeased and the owners of the Note shall have no further rights under this resolution except to receive payment of the principal of, premium, if any, and interest on the Note from the cash or securities deposited in trust and the interest and gains thereon and to transfer and exchange Note as provided herein.

5. Construction Fund; Proceeds of Note Sale. The City Treasurer is authorized and directed to open a separate account to be known as the 2019 CAPITAL IMPROVEMENT NOTE CONSTRUCTION FUND (the "Construction Fund"). The Treasurer shall deposit the proceeds of each draw from the Note less accrued interest, if any, which shall be deposited into the Debt Retirement Fund. The moneys in the Construction Fund shall be used solely to pay the costs of the Project and the costs of issuance of the Note.

6. Note Form. The Note shall be in substantially the following form with such changes as may be required to meet the requirements of the Purchaser with the approval of the City's Bond Counsel:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MUSKEGON

CITY OF MUSKEGON

2019 CAPITAL IMPROVEMENT NOTE
(LIMITED TAX GENERAL OBLIGATION)

Maturity Date

_____ 1, 2022

Date of Original Issue

_____ 1, 2019

Registered Owner: Fifth Third Bank

The City of Muskegon, County of Muskegon, State of Michigan (the "City"), for value received, hereby promises to pay to the Registered Owner specified above, or registered assigns,

Three Million Dollars (\$3,000,000)

or such portion thereof as shall have been advanced to the City, on the Maturity Date shown above, unless prepaid prior thereto as hereinafter provided, with interest thereon (computed on the basis of a 30 day month) from the date such installment of principal is delivered to the City, until paid, at a variable rate of interest equal to the lesser of (i) the maximum annual rate permitted by law and (ii) a rate per annum equal to the 30 day LIBOR rate plus 1.25%, adjusted on the first business day of each month, first payable on December 1, 2019 and the first day of each month thereafter.

Principal of this note is payable at the office of Treasurer of the City, or at the corporate trust office of such other transfer agent as the City may hereafter designate by notice mailed to the registered owner not less than sixty (60) days prior to any interest payment date (the "Transfer Agent"). Interest on this note is payable to the registered owner of record as of the 15th day of the month preceding the interest payment date as shown on the registration books of the City kept by the Transfer Agent by check or draft mailed by the Transfer Agent to the registered owner of record at the registered address.

This note is issued as a fully-registered, single instrument note in the principal sum designated above, issued pursuant to the provisions of Act 34, Public Acts of Michigan, 2001, as amended, and pursuant to a resolution of the City Commission of the City adopted on October 8, 2019 for the purpose of paying the cost of various capital improvements in the City.

This note, including the interest thereon, is payable as a first budget obligation from the general funds of the City, and the City is required, if necessary, to levy ad valorem taxes on all taxable property in the City for the payment thereof, subject to applicable constitutional, statutory and charter tax rate limitations.

The note shall be subject to redemption in whole or in part at any time prior to maturity to be determined by the City, at a price equal to 100% of the principal amount being redeemed plus accrued interest to the date fixed for redemption.

In case less than the full amount of the note is called for redemption, the Transfer Agent, upon presentation of the note called in part for redemption, shall register, authenticate and deliver to the registered owner of record a new note in the principal amount of the portion of the original note not called for redemption.

This note is transferable only upon the registration books of the City kept by the Transfer Agent by the

registered owner of record in person, or by the registered owner's attorney duly authorized in writing, upon the surrender of this note together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new registered note or note in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the resolution authorizing this note and upon the payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this note and the series of note of which this is one, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the City, including this note, does not exceed any constitutional, statutory or charter debt limitation.

IN WITNESS WHEREOF, the City, by its City Commission, has caused this note to be signed in the name of the City by the manual signatures of its Mayor and City Clerk and a facsimile of its corporate seal to be printed hereon, all as of the Date of Original Issue.

CITY OF MUSKEGON
County of Muskegon
State of Michigan

By: _____
Its: Mayor

(SEAL)

By: _____
Its: City Clerk

7. Useful Life of Project. The estimated period of usefulness of the Project is hereby declared to be not less than ten (10) years.

8. Negotiated Sale. The City Commission has considered the option of selling the Note through a competitive sale and a negotiated sale and, pursuant to the requirements of Act 34, determines that a negotiated sale of the Note will allow more flexibility in obtaining financing and flexibility in repayment of the Note and will provide the City with greater flexibility in structuring note maturities and adjusting terms for the Note.

9. Sale to Purchaser; Delegation to Authorized Officer; Sale Order. The sale of the Note to the Purchaser is hereby approved, and the Authorized Officers are each individually authorized to take all other necessary actions required to effectuate the sale, issuance and delivery of the Note to the Purchaser based on the Term Sheet attached as Exhibit A and within the parameters authorized in this resolution.

10. Adjustment of Note Terms. The Authorized Officers are each individually authorized to adjust the final note details as set forth herein to the extent necessary or convenient to complete the sale of the Note and in pursuance of the foregoing are each authorized to exercise the authority and make the determinations pursuant to Sections 315(1)(d) of Act 34, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, date of issuance, interest payment dates, redemption rights, and other matters within the parameters established by this resolution; provided that the principal amount of Note issued shall not exceed the principal amount authorized in this resolution, the interest rate per annum on the Note shall not exceed the maximum rate permitted by law and the final maturity shall be no later than three years from the date of closing on the Note.

11. Note Counsel. Miller, Canfield, Paddock and Stone, P.L.C. is hereby approved as note counsel for the Note, notwithstanding periodic representation in unrelated matters of the Underwriter and other parties or potential parties to the transaction contemplated by this resolution.

12. Authorization of other Actions. The Authorized Officers are each authorized and directed to (i) agree to submit such annual audit and other reports to the Purchaser as reasonably required by the Purchaser at the time of issuance of the Note, (ii) pay the Purchaser for its costs related to its due diligence activities and the review and negotiation of the legal documentation associated with the issuance of the Note and (iii) do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Note.

(Balance of this page intentionally left blank)

13. Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on October 8, 2019, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

City Clerk

EXHIBIT A



August 5, 2019

City of Muskegon
Attn: Beth Lewis
933 Terrace Street
Muskegon, MI 49443

Fifth Third Bank ("Fifth Third") is pleased to provide you with this summary term sheet ("Term Sheet"). This Term Sheet summarizes the basic terms and conditions that Fifth Third is considering relative to the proposed financing.

Summary Terms and Conditions	
Borrower(s):	City of Muskegon, a Michigan municipal entity.
Guarantor(s):	N/A, unless the borrower becomes a designated non-profit entity. If that is the case, the Bank would ask for an unlimited, unsecured guaranty from the City of Muskegon.
Facility Type:	\$3,000,000 Draw Note. Principal from this non-revolving note could be advanced at the City's discretion.
Tenor/Maturity:	Three (3) years from the closing date.
Repayment Schedule:	Interest-only payments would be due and payable on a monthly basis once any principal funds are drawn on the note. Principal payments could be made at the City's discretion. The expectation is that the entire principal balance of the note would be fully repaid prior to maturity.
Pricing:	A Taxable Variable interest rate of 1.25% above 30-day LIBOR, adjustable monthly will be available for the entire duration (36 months) of the proposed Note.
Fees:	No note processing fee will be proposed. Borrower to reimburse Bank for any costs related to legal documentation of Note, if applicable.
Collateral:	Unsecured.
Financial Covenant(s):	None proposed at this time.
Reporting Requirements:	Normal and Customary. At a minimum, an annual audit on the Borrower would be required. Some other type of project-specific reporting would be considered.
Other Expenses:	The Borrower shall pay all costs and expenses of Fifth Third incurred in connection with the negotiation, preparation, and administration of the Facilities, and all due diligence related thereto, including without limitation, the legal fees of the Bank's counsel (if necessary), regardless of whether the Facilities are closed.
Additional Bank Services:	Borrower shall maintain its primary banking relationship (checking account and disbursement services) with Fifth Third throughout the term of the proposed financing.
Next Steps:	Borrower to communicate acceptance of the above terms and Bank will begin final credit underwriting process with accelerated pace to closing.

This Term Sheet is not a commitment to consummate any transaction, or to take or refrain from taking any other action. It is for discussion purposes only. Discussions may be terminated at any time without liability to, or obligation of, Fifth Third. Any commitment will be documented in a written commitment letter signed by an authorized officer of Fifth Third, and will be subject to the terms and conditions set forth therein. Fifth Third has no obligation to provide a commitment.

This Term Sheet is confidential information subject to any applicable confidentiality or nondisclosure agreement. If there is no applicable confidentiality or nondisclosure agreement then you will, during the discussions contemplated by this Term Sheet and thereafter, hold this Term Sheet and its contents in confidence and will not disclose them to any person or entity (except your directors, officers, employees, legal counsel, and financial representatives with a bona fide need to know) without Fifth Third's prior written consent.

Sincerely,

FIFTH THIRD BANK
Ronald P. Foor
Senior Vice President
(269) 567-7908



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 10/08/2019	Title: MDOT Maintenance Agreement
Submitted By: Leo Evans	Department: Public Works
Brief Summary: MDOT has requested renewal of the maintenance contract by which the City provides maintenance for MDOT operated streets (M-46 / US-31 BR) within the City of Muskegon. The contract is largely unchanged from previous iterations and carries a 5-year term.	
Detailed Summary: The City will be reimbursed by MDOT for work performed on M-46 and US-31 BR within the City of Muskegon. Previous contracts have been in place for several years without major concern. The contract has been reviewed by staff and counsel and no objections noted.	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: Authorize staff to sign the State Trunkline Maintenance Contract.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

MICHIGAN DEPARTMENT OF TRANSPORTATION
STATE TRUNKLINE MAINTENANCE CONTRACT
CITY OF MUSKEGON

This Contract, made and entered into this date of _____, by and between the Michigan Department of Transportation (MDOT), and the Michigan municipal corporation (Municipality) of the

City of Muskegon.

RECITALS:

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

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

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

The parties agree as follows:

Section 1. ORGANIZATION, EQUIPMENT, AND FACILITIES

The Municipality will provide personnel, equipment, materials, and facilities to maintain the state trunkline highways and provide agreed upon services under the terms of this Contract. MDOT will review the Municipality's operation and organizational plan, annually, relative to the work to be completed under this Contract. MDOT will approve the plan if it meets MDOT's goals for the state trunkline system. The Municipality will furnish an organizational chart showing garage locations, all facilities including salt sheds, the names of supervisory personnel, and any other information incidental to the performance of this maintenance contract as required by the Region Engineer.

Section 2. SCOPE OF WORK

- A. The Municipality will perform maintenance work under the direction of the Region Engineer of MDOT or a designee of the Region Engineer, acting under the general direction of the Engineer of Transportation Systems Management Operations of MDOT. Maintenance and other work will be performed under the terms of this Contract and as covered by the Field Activity Budget, subsequent work plans, and Transportation Work Authorizations (TWAs), for each fiscal year, which are incorporated herein by reference. Work performed under this Contract will be performed in accordance with accepted maintenance practices and/or specifications provided by MDOT as identified in a written Letter of Understanding.
 - 1. A written Letter of Understanding shall be drafted by MDOT and signed by both MDOT and the designated representative of the Municipality. The letter shall remain in effect until either replaced or modified by the Region Engineer and approved by the Municipality. The letter will outline the number and type of maintenance activities to be performed under this Contract (A sample Letter of Understanding is attached as Appendix F). The Letter of Understanding shall provide sufficient detail of the work activities to be performed, expectations or outcomes from the performance of this work, and identification of budget line items for budgeting and billing purposes.
 - 2. The executed Letter of Understanding and all subsequent approved revisions thereto, are incorporated herein by reference as if the same were repeated in full herein.
 - 3. If the Municipality is unable to perform any of the services outlined in the Letter of Understanding on a twenty-four (24) hour, seven (7) day-a-week basis, the Municipality will immediately notify MDOT. MDOT will work with the Municipality to ensure that the services defined in the Letter of Understanding are performed.
- B. When the Municipality inspects permits on MDOT's behalf or assists MDOT with a permit:
 - 1. MDOT will require all Permit Applicants to "save harmless" the State of Michigan, Transportation Commission, MDOT, and all officers, agents, and employees thereof, and the Municipality, their officials, agents and employees, against any and all claims for damages arising from operations covered by the permit as a condition of all permits issued by MDOT.

2. MDOT will further require Permit Applicants to provide comprehensive general liability insurance, including coverage for contractual liability, completed operations, and/or product liability, X (Explosion), C (Collapse), & U (Underground), and a contractor's protective liability with a blasting endorsement when blasting is involved, or commercial general liability insurance which includes all the above, naming as additional parties insured on all such policies, the State of Michigan, Transportation Commission, MDOT, and all officers, agents, and employees thereof, the Municipality their officials, agents, and employees. The Permit Applicant will provide written proof of the insurance to MDOT. MDOT may waive this requirement for permits issued to governmental entities and public utilities or when specifically waived by the Municipality in writing.

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

Comprehensive General Liability:

Bodily Injury	--	\$500,000 each occurrence
	--	\$500,000 each aggregate
Property Damage	--	\$250,000 each occurrence
	--	\$250,000 each aggregate

Commercial General Liability Insurance:

\$500,000 each occurrence and aggregate

C. TWAs may be issued by the Region Engineer for special maintenance work (work not covered by the Line Item Budget) and non-maintenance work. This work may be performed by the Municipality or a subcontractor as set forth in Section 9 of this Contract. TWAs will be performed in accordance with MDOT's accepted maintenance practices and specifications as specified on the TWA. The Municipality will provide the necessary supervision or inspection to assure that the work is performed in accordance with the TWA.

The Municipality and MDOT may agree to include additional maintenance items to be covered under this Contract. Such items may include, but are not limited to, maintenance of traffic control devices (signals), freeway lighting and intelligent traffic system (ITS). All such work will be listed in the Letter of Understanding, included in the line item budget and defined in a supplemental scope which will become an attachment to this Contract.

The Municipality shall be responsible for providing all traffic control necessary to complete the work as outlined in this Contract unless otherwise agreed to by MDOT.

The Municipality and MDOT may enter into separate agreements for the shared payment of installation, maintenance, and energy costs for traffic control devices.

- D. The Region Engineer is authorized to issue written orders, as necessary, for the performance of maintenance work under the provisions of this Contract.

Section 3. INTEGRATION OF STATE AND MUNICIPAL WORK

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

Section 4. HIGHWAY MAINTENANCE CONTRACT ADMINISTRATOR

The Municipality hereby designates Leo Evans as Contract Administrator on state trunkline highways, who will be responsible for budget and the administration of the Contract. In the event the Municipality desires to replace the Contract Administrator, the Municipality will notify MDOT within (30) days of the change in writing.

Section 5. SUPERVISION

The Municipality hereby designates, where applicable, the following:

Maintenance Superintendent (Streets): Leo Evans

Signal/Electrical Superintendent: n/a

Storm Sewer Superintendent: Leo Evans

Other (Specify): n/a

who will supervise all work covered by this Contract. In the event the Municipality desires to replace the designated contacts, the Municipality will notify MDOT within (30) days of the change in writing.

Section 6. WAGE SCHEDULE

Wages paid by the Municipality for work on state trunkline highways will be the same as on street work for the Municipality.

Premium Pay and Overtime Pay (specify under what conditions and percentage of regular rate paid if not specified in the attached labor agreement).

See union agreement.

Pay for "show-up time" (Specify under what conditions and number of hours, if a minimum number is used and is not specified in the attached labor agreement).

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

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

Section 7. MATERIALS TO BE ACQUIRED AND SPECIFICATIONS

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

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

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

Section 8. PRICE SCHEDULE OF MATERIALS AND SERVICES

Materials produced and/or supplied by the Municipality including aggregates and bituminous materials, may be furnished at a firm unit price subject to approval of source and price by the Region Engineer. Firm unit prices are not subject to unit price adjustment by review.

The Municipality may change, add, or delete firm unit prices when requested in writing and approved by the Region Engineer at least sixty (60) days prior to the effective date of the change, addition, or deletion.

FIRM UNIT PRICES

<u>ITEM KIND</u>	<u>ITEM LOCATION</u>	<u>PRICE UNIT</u>	<u>PRICE INCLUDES*</u>	<u>PER UNIT</u>
N/A				

Insert above, the following applicable number(s):

*Firm Unit Price Includes:

<u>Item Kind</u>	<u>Item Locations</u>
1. Processing/or Mixing Costs	1. Pit Site
2. Stockpiling/or Hauling to Stockpile Costs	2. Yard
3. Royalty Costs	3. Other (Describe)
4. Municipal Supplied Salt or Calcium Chloride (when used in a winter salt/sand mixture)	
5. Winter Sand	
6. Bituminous Costs	
7. Other (Describe)	

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

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

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

Section 9. SUBCONTRACTS

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

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

Emergency work will be subcontracted based on a verbal approval given by the Region Engineer. The work must be supported by the subsequent submission of Form 426 upon completion of work. State Administrative Board approval is required within thirty (30) days of completion of emergency work for contracts of \$250,000 or greater.

It is the intent of the parties to extend the terms of the Contract if the subcontract work is in progress at the conclusion of the Contract term. This provision shall not apply if this Contract is terminated by the Municipality or MDOT.

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

For subcontracts involving the items of CLEANING DRAINAGE STRUCTURES, SWEEPING AND FLUSHING or GRASS AND WEED CONTROL, the Municipality will include a cancellation clause that will allow the Municipality to cancel the subcontract if funds are not made available by MDOT.

County and/or Municipality-based advantage programs (CBA Process) or any type of preference program that awards contracts based on criteria other than low bid through the competitive bidding process, will not be used for MDOT-funded projects.

The term of the subcontract will not exceed five (5) years; said term will include any time extensions.

The subcontract solicitation and approval process will be as follows:

- A. **Subcontracts \$24,999 or less:** The Municipality will solicit either a bid price, or rate quotation from three or more qualified sources. Documentation of solicitation from all qualified sources must be retained for at least three (3) years following final payment made for each subcontract. Region Engineer approval of Form 426 is required.
- B. **Subcontracts \$25,000 or greater:** The Municipality will advertise and award by competitive bid. Advertisements must clearly define contract term and location of work. Documentation of the solicitation from all qualified sources must be retained for at least three (3) years following final payment made for each subcontract. Region Engineer approval of Form 426 is required.

State Administrative Board approval is required prior to the execution of contracts that are \$500,000 or greater.

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

Section 10. NON-DISCRIMINATION

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

Section 11. ANTI-KICKBACK

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

Section 12. SCOPE OF CONTRACT

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

Section 13. INSURANCE

- A. The Municipality will furnish MDOT with a certificate of automobile liability insurance, which complies with the No-Fault Automobile Insurance laws of the State of Michigan, MCL 500.3101, *et seq.* The Insurance coverage will include vehicles owned, leased or rented by the Municipality. Such insurance will not be less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) for bodily

injury or death of any one person. Coverage for public liability, property damage, and combined single limit will also comply with the No-Fault Automobile Insurance laws of the State of Michigan. The Municipality will provide thirty (30) days notice to MDOT prior to cancellation, termination, or material change of the policy. The certificate of said insurance, on MDOT Form shall be submitted to MDOT on DEPARTMENT Form 428 (Certificate of Insurance for State Highway Maintenance Contract) covering public liability and property damage, indicating thereon the policy number, and the aforesaid thirty (30) days notice provisions and the limits of liability. The Municipality agrees to review its insurance programs with its statewide association in an attempt to obtain cost savings and efficiency for MDOT.

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

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

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

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

SECTION 14. WORKERS' DISABILITY COMPENSATION

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

SECTION 15. BUDGET GUARANTEE

Each MDOT fiscal year, a winter and non-winter maintenance budget will be prepared separately. These budgets will be established by the Region Engineer within guidelines established by MDOT. Prior to the development of an annual budget by the Region Engineer, the Municipality and MDOT will meet and develop a proposed work plan including a schedule for routine maintenance and the associated cost of the work plan for the coming year. This proposed work plan will be broken down by month and form the basis of the non-winter maintenance budget for the Municipality for the next fiscal year. The non-winter budget will be balanced over all twelve months of the fiscal year. The budget will be adjusted each month to address budget overruns and under-runs to ensure that total Municipality budget is not exceeded. MDOT will work with the Municipality to reach agreement on the components of this annual work plan, taking into consideration the features and conditions of the state trunkline system within the Municipality's contract area, as well as the size of the Municipality's staff that is available for state trunkline Highway maintenance. MDOT and the Municipality will identify maintenance activities that can be performed in the winter months when not performing winter maintenance.

The Municipality will work with MDOT to develop an annual priority plan for scheduling work over the term of this Contract consistent with MDOT'S road preservation objectives.

MDOT will establish the winter maintenance budget based on a five (5)-year average of winter expenditures which includes the costs for labor, fringe benefits, equipment, MDOT Salt Stores, Municipality supplied road salt, winter sand, other de-icing chemicals and overhead.

The Region Engineer and the Municipality will review the non-winter maintenance budget together at least every other month. This review will cover work planned and conducted, work planned and not conducted, and the current status of the non-winter maintenance budget. Any adjustments to the proposed work plan to curtail or expand operations to meet budget limitations will be covered in this budget review. During winter operations, the winter budget will be reviewed monthly by the Region Engineer and the Municipality.

MDOT and the Municipality will meet between March 1 and May 15 of each budget year to discuss a supplemental summer program. The supplemental summer program will be funded by the remainder of the winter budget. During this meeting, participants will estimate the remainder of the winter budget, review the status of current and future bills for winter maintenance and propose a supplemental summer. The proposed work activities will be prioritized to support MDOT'S preservation strategy as indicted in Appendix G.

SECTION 16: REIMBURSEMENT SCHEDULE REQUEST FOR REIMBURSEMENT

MDOT will reimburse the Municipality for the following costs incurred in the performance of routine maintenance, non-maintenance, and all other work covered by this Contract, except as set forth in Sections 18, 19, 20, and 21. To be eligible for reimbursement under this Section, costs must be submitted to MDOT prior to the start of the review for each respective year of the Contract period.

- A. MDOT will reimburse the Municipality for the cost of all labor employed in the performance of this Contract. The reimbursement will include the expense of permit inspections, field and office engineering, and reviewing expenses in connection with force account work by subcontractors.
- B. MDOT'S share of the cost of EMPLOYEE BENEFITS as referred to in Section 6 as a percentage of payroll. The percentage shall be developed using MDOT Form 455M (Report of Employee Benefit Costs for the Municipality) and shall conform with the general accounts of the Municipality on the Municipality's previous fiscal years' experience. These charges are subject to review in accordance with Section 25.
- C. MDOT'S share of the actual cost of Municipality owned or purchased energy.
- D. MDOT will reimburse the Municipality for the cost of purchased bulk (measured by volume or weight) materials and Non-Bulk (measured by area or count) material used in the performance of this Contract. The Municipality shall deduct all discounts or rebates in excess of two percent (2%), to establish the reimbursed cost.
- E. MDOT will reimburse the Municipality for the cost of handling materials furnished by the Municipality and materials furnished by MDOT as follows:

1. **Bulk Items (measured by volume or weight):**

The direct expenses of handling, such as unloading, processing, stockpiling, heating or loading of materials measured by volume or weight in bulk, bags or drums such as aggregates, bituminous materials and chemicals, on condition that reimbursement of such expenses is not provided elsewhere herein, provided that these costs can be identified within the records of the Municipality. When bulk items paid for by MDOT are co-mingled with the Municipality's materials, MDOT will only reimburse the Municipality for the cost of handling the portion expected to be used on the state trunkline highways. The Municipality will establish a rate of use annually, based on the previous year's use to

identify MDOT's share of handling cost. The Municipality's established rate is subject to adjustment by review.

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

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

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

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

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

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

- J. MDOT will reimburse the Municipality for MDOT'S pro-rata share of the cost to maintain chemical storage facilities as provided for in the chemical storage facility contracts between the Municipality and MDOT.
- K. Requests for reimbursement to be made at least bi-monthly (every other month) on the basis of certified statement of charges prepared and submitted by the Municipality within thirty (30) days from the end of each bi-monthly period on forms furnished by MDOT or using an equivalent approved alternative format. Costs submitted beyond sixty (60) days from the end of each bi-monthly period will include written justification for the delay and will be paid only upon approval of the Region Engineer. Upon written request to the Region Engineer, payment may be made to the Municipality on a monthly basis, after submission to MDOT of certified statements of costs for each monthly payment period. Municipalities with a line item budget contract of \$100,000 or greater **shall** submit request for reimbursement on a **monthly** basis through MDOT'S Local Agency Payment System (LAPS).
- L. The Municipality will be reimbursed as a direct cost for work performed by the Maintenance Superintendent making regular inspections of state trunkline highways in accordance with written instructions from the Region Engineer. This time shall be specifically recorded on daily time sheets and reported as a direct labor charge.

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

SECTION 17: ELECTRONIC FUNDS TRANSFER

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

SECTION 18: SNOW HAULING

MDOT will share in the cost of snow hauling if each snow hauling effort is approved by the Region Engineer. MDOT'S share of snow hauling will be determined based on the ratio of area designated for traffic movement to the total area of the state trunkline highway right-of-way within the agreed upon area of snowhaul. MDOT will subtract the area of parking lanes and sidewalks from the total area of the state trunkline highway right-of-way to determine the area designated for traffic movement. MDOT'S reimbursement for snow hauling from state trunkline highways, based upon this calculation, is paid at the rate of 50 percent (%) of actual charges supported by proper documentation. The frequency (annually, each storm, etc.) will be at the discretion of the Region Engineer. The Municipality should denote snow hauling charges as Activity 149, Other Winter Maintenance, on Trunk Line Maintenance Reports. A prior written authorization for each snow haul event from the Region Engineer shall be required and kept on file for review purposes.

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

SECTION 19: PAVEMENT MARKING

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

SECTION 20: COMPENSATION FOR AESTHETIC WORK ITEMS

Compensation for the items of SWEEPING AND FLUSHING, GRASS AND WEED CONTROL and ROADSIDE CLEAN UP will be made on the basis of actual expenditures only, except that in no case will the Municipality be compensated for a total expenditure in excess of the budget amount designated each of these three work activities on the Summary of the Field Activity Budget for the appropriate MDOT fiscal year.

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

SECTION 21: TREES AND SHRUBS

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

SECTION 22: EQUIPMENT LIST

The Municipality will furnish MDOT a list of the equipment it uses during performance under this Contract, on MDOT form 471 (Equipment Specifications and Rentals.) This form shall be furnished to MDOT no later than February 28 of each year.

SECTION 23: RECORDS TO BE KEPT

The Municipality will:

- A. Establish and maintain accurate records, in accordance with generally accepted accounting principals, of all expenses incurred for which payment is sought or made under this Contract, said records to be hereinafter referred to as the "RECORDS." Separate accounts will be established and maintained for all costs incurred under the state trunkline maintenance contract. The Municipality will retain the following RECORDS, and others, in accordance with generally accepted accounting principles:
 1. Retain daily timecards or electronic timekeeping files for employees and equipment indicating the distribution of time to route sections and work items. Daily timecards must be signed by the employee, the immediate supervisor and by the timekeeper when the timekeeper is employed. If the Municipality uses crew-day cards, it will retain crew-day cards backed by a time record for the pay period signed as above, in lieu of daily individual timecards detailing the time distribution. If the Municipality uses electronic timekeeping, it will retain data files detailing time distribution and assigned supervisor approval.
 2. Retain properly signed material requisitions (daily distribution slips) which indicate type of material, quantity, units of measure, the date of distribution and the distribution to route sections and work items.

3. Retain additional cost records to support and develop unit cost charges and percentages as applied to invoice costs. No such cost records are necessary in support of the overhead percentage or the five percent (5%) handling charge.

- B. The Municipality will maintain the RECORDS for at least three (3) years from the date of MDOT'S receipt of the statement of charges for the quarter ending September 30 of each year of this Contract period. In the event of a dispute with regard to the allowable expenses or any other issue under this Contract, the Municipality will thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals for that decision has expired.

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

SECTION 24: COST CERTIFICATION, REIMBURSEMENT AND ADJUSTMENT

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

SECTION 25: CONTRACT REVIEW AND RESPONSE

The Municipality's records will be subject to review/audit within the statute of limitations, and the review/audit period will coincide with the Municipality's fiscal year, unless the Contract is terminated or not renewed. The term "review/audit" hereafter will be referred to as "review".

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

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

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

Within sixty (60) days after the date of the Notice of Review Results, the Municipality will:

1. Respond in writing to the responsible Bureau of MDOT indicating whether or not it concurs with the Review Report;
2. Clearly explain the nature and basis for any disagreement as to a disallowed item of expense; and
3. Include a written explanation as to any questioned item of expense. Hereinafter, the "RESPONSE" will be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned item of expense. Where the documentation is voluminous, the Municipality may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by MDOT. The RESPONSE will refer to and apply the language of the Contract.
4. The Municipality agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes MDOT to make a final decision to either allow or disallow any items of questioned cost.

MDOT will review submitted RESPONSE and attached documentation from the Municipality. MDOT will reply in writing acknowledging receipt of the Municipality RESPONSE. The submitted RESPONSE and attached documentation from the Municipality will be referred to the MDOT Appeal Panel. See Section 26, "Dispute Resolution Process".

SECTION 26: DISPUTE RESOLUTION PROCESS

A. Contract Disputes

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

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

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

B. Review Disputes

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

- 1) MDOT will provide the Municipality with an opportunity to appear before the Appeal Panel to explain and support their RESPONSE.
- 2) If, after an Appeal Panel written decision, the Municipality will either accept the decision or file a lawsuit in a court of proper jurisdiction to contest MDOT's decision. The filing of a lawsuit must be initiated by the Municipality within thirty (30) days of the receipt of the Appeal Panel's written decision. MDOT will not withhold or offset the funds in dispute if the Municipality files a lawsuit in a court of proper jurisdiction.
- 3) If the Municipality fails to repay an overpayment or reach an agreement with MDOT on a repayment schedule within the thirty (30) day period, the Municipality agrees that MDOT will deduct all or a portion of an overpayment from any funds due the Municipality by MDOT under the terms of this Contract.
- 4) Every effort will be made to complete this process within 60 calendar days by both parties.

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

Injunctive Relief

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

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

SECTION 27: TERM OF CONTRACT

This Contract will be in effect from October 1, 2019 through September 30, 2024.

SECTION 28: BUDGET REDUCTION, TERMINATION OR NON-RENEWAL OF CONTRACT

- A. For convenience and without cause, MDOT may reduce the budget, terminate, or choose not to renew this Contract, if written notice is given to the Municipality at least one (1) year prior to the beginning of the Contract year to which the budget reduction, termination, or expiration applies. One year from the date of such notice shall be deemed the termination date of the Contract.

The Municipality may reduce the budget, terminate, or choose not to renew this Contract if one (1) year's written notice, prior to the effective date of budget reduction, termination, or expiration is given to MDOT. One year from the date of such notice shall be deemed the termination date of the Contract.

- B. Upon termination of this Contract "for cause" or any reason, the Municipality must, for a period of time specified by MDOT (not to exceed 90 calendar days), provide all reasonable transition assistance requested by MDOT, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to MDOT or its designees. This Contract will automatically be extended through the end of the transition period.

SECTION 29: STATE OF MICHIGAN ADMINISTRATIVE BOARD RESOLUTION

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

SECTION 30: CONTRACTUAL INTERPRETATION

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

All words and phrases not specifically defined in Appendix A shall be construed and understood according to the ordinary meaning of the words used, but technical words and phrases shall have the meanings set forth in MDOT's publications, manuals, advisories, or guides, as applicable. If no MDOT publication, manual, advisory or guide is applicable, such technical words shall be construed and understood according to the usual and accepted meaning used in the industry or field to which they relate. In case of any discrepancies between the body of this Contract and any appendices attached hereto, the body of this Contract will govern.

SECTION 31: AUTHORIZED SIGNATURE(S)

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

CITY OF MUSKEGON

BY: _____
TITLE:

BY: _____
TITLE:

MICHIGAN DEPARTMENT OF TRANSPORTATION

BY: _____
TITLE: MDOT Director

APPENDIX A
MICHIGAN DEPARTMENT OF TRANSPORTATION
MUNICIPALITY CONTRACT
DEFINITIONS

ANNUAL WORK PLAN: A schedule developed by the Municipality, and a Region Engineer designee, of the routine maintenance work to be performed annually on state trunklines by the Municipality.

BUDGET/FIELD ACTIVITY BUDGET: Both items are defined as the budgeted amount distributed to the Municipality at the beginning of the fiscal year (October 1).

CHEMICAL STORAGE FACILITIES: Bulk salt storage buildings.

COMPONENTS OF AN ANNUAL WORK PLAN: An outline of agreed upon maintenance activities to be performed to meet the needs of the trunkline. The components of this plan shall be a list of prioritized maintenance needs and a general break-down of how the Municipality's budget will be applied to the standard maintenance activity groups to facilitate work on the maintenance needs.

DEPARTMENT: Means the Michigan Department of Transportation.

MDOT APPEAL PANEL: A panel comprised of four Bureau Directors responsible for deciding Contract disputes, three of which will constitute a quorum.

EQUIPMENT SPECIFICATIONS AND RENTALS: An annual list of equipment proposed to be used on the state trunkline system by the Municipality forwarded to the Department with the hourly rates of each piece of equipment.

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

OFFICE OF COMMISSION AUDIT (OCA): The Office of Commission Audit reports directly to the Michigan State Transportation Commission. The Office of Commission Audits is

charged with the overall responsibility to supervise and conduct review activities for the Department of Transportation. The auditor submits to the Commission reports of financial and operational audits and investigations performed by staff for acceptance.

REGION ENGINEER: The Department's designated chief engineer (or designee) responsible for the oversight of each MDOT region.

RESPONSE: A written explanation as to any questioned item of expense

SCHEDULE C EQUIPMENT RENTAL RATES: The Department's annual list of statewide hourly equipment rental rates that shall be charged for the use of road equipment.

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

STATE ADMINISTRATIVE BOARD: The State Administrative Board consists of the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and the Superintendent of Public Instruction. The State Administrative Board has general supervisory control over the administrative activities of all state departments and agencies, including but not limited to, the approval of contracts and leases, oversight of the state capitol outlay process, and the settlement of small claims against the state.

STATE TRUNKLINE HIGHWAY: A road, highway, or freeway under the jurisdiction of the Department, and usually designated with an M, US, or I, preceding the route number.

WINTER MAINTENANCE: Maintenance operations centered on the process to remove snow and ice from the trunkline to provide a reasonably clear and safe driving surface under winter conditions. The activity codes that define the budget line items for winter maintenance are:

1410: Winter maintenance

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

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

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

APPENDIX B
MICHIGAN DEPARTMENT OF TRANSPORTATION
MUNICIPALITY CONTRACT
OVERHEAD SCHEDULE

Effective October 1, 2019, through September 30, 2024

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

APPENDIX C
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

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

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

Revised June 2011

APPENDIX D

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

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

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

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

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

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

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

WHEREAS, MDOT is a party to a significant number of contracts which by their nature involve substantial consideration and often require amendments

arising out of changes in scope, differing field conditions and design errors and omissions;

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

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

1. Resolution 2011-2 is rescinded.

2. A contract for professional design, engineering or consulting services requiring MDOT prequalification in connection with the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Professional Engineering Consultant Contract") or a contract for the construction or physical improvement of a street, road, highway, bridge, transit or rail system, airport or other structure congruous with transportation ("Construction Contract") must be approved by the Board prior to execution by MDOT if the amount of the contract is \$500,000 or more. MDOT may obtain approval of the solicitation of a Professional Engineering Consultant Contract or a Construction Contract which, based on the estimate prepared by an engineer employed by the State of Michigan, is estimated to be \$500,000 or more. A contract arising out of such solicitation must be approved by the Board prior to execution by MDOT if the amount of the contract exceeds 110% of the State engineer's estimate.

3. An amendment to a Professional Engineering Consultant Contract or a Construction Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments exceed 10% of the original contract, except that an amendment to a Professional Engineering Consultant Contract or a Construction Contract need not be approved by the Board if: a) approved in accordance with applicable federal law or procedure by a representative of a federal agency contributing funds to the project that is the subject of the contract; or b) approved in accordance with MDOT's internal procedures provided the procedures include approval by at least one MDOT employee who has managerial responsibility and is neither the project manager nor directly involved in the administration of the project.

4. A contract for services not requiring MDOT prequalification ("Service Contract") in the amount of \$500,000 or more must be approved by the Board prior to execution by MDOT. A Service Contract does not include a Professional Engineering Consultant Contract or a Construction Contract.

5. An amendment to a Service Contract must be approved by the Board prior to execution by MDOT if the amount of the amendment and the sum of all previous amendments total \$500,000 or more. Thereafter, an amendment to a Service Contract must be approved by the Board if the amount of the amendment and the sum of all amendments executed after the most recent Board approval total \$500,000 or more.

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

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

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

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

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

11. MDOT may enter into a contract or award a grant without approval of the Board in situations where emergency action is required. For all emergency contracts or grants of \$250,000 or more, MDOT must transmit to the Board a

written report setting forth the nature of the emergency and the key terms of the contract or grant within 30 days of executing the contract or awarding the grant.

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

This Resolution is effective April 25, 2017.



APPENDIX E

SUBCONTRACT REQUIREMENTS

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

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

Amendments

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

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

April 25, 2017



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

PAUL C. AJEGBA
DIRECTOR

APPENDIX F

SAMPLE: Letter of Understanding

Date

Contract Agency Name
Address
Contact Person, Title

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

Dear _____:

This Letter of Understanding is in follow up to our recent meeting held on _____ and will serve as a reference to clarify the Scope of Work set forth in Section 2, of the State Trunkline Maintenance Contract.

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

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

Request for reimbursement of the Scope of Work activities identified herein shall be in accordance with Section 16 of the Contract.

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

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

Sincerely,

Name
Maintenance Engineer
MDOT ____TSC

APPROVED BY:

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

Dated this _____ day of _____, 2014

Name, Title

APPROVED BY:

Region Engineer
Michigan Department of Transportation

Date _____

APPENDIX G

Non-Winter Maintenance Activity & Level of Service Priority

For the purposes of defining priority levels, the following guidance is suggested:

"Critical" work activities are those which address conditions in the infrastructure that pose an imminent threat to public health and safety. This would include instances in which defects or damage currently exist and must be repaired to restore the infrastructure to a safe operating condition. Examples may include filling existing potholes, repairing significantly damaged guardrail, grading shoulders with an edge drop in excess of 1 ½ *inches* or replacing a collapsed culvert.

"High Priority" work activities are those which address serious deficiencies in the condition of the infrastructure which, in the professional judgment of the Region and TSC management, could lead to defects or damage in the near future that would seriously impact public health and safety if they are not addressed now. Examples may include repairing significantly deteriorated pavement joints and cracks or repairing culverts with section loss.

"Routine/Preventive" work activities are those which address the condition of the infrastructure in such a way as to maintain or prevent the condition from deteriorating to serious condition. Examples may include sealing pavement cracks, grading shoulders, cleaning culverts and ditches, and brushing.

Priority Group 1:

Traffic Signal Energy
Facility Utilities
Freeway Lighting Energy
Operation of Pump Houses
Operation of Movable Bridges
Auto Liability Insurance (county contracts)
Supervision (county contracts)
Roadway Inspection (minimum acceptable level- county contracts)
Billable Construction Permits
Equipment Repair and Servicing
Fuel
Critical Surface Maintenance
Critical Guardrail Repair
Critical Sign Replacement
Critical Drainage Repair
Critical Traffic Signal Repair
Critical Freeway Lighting Repair
Critical Response to Traffic Incidents (to assist in traffic control, facility restoration)
Critical Drainage Area Sweeping (to prevent roadway flooding)

Critical Structural Maintenance on Bridges
Critical Pump House Maintenance
Critical Shoulder Maintenance (to address shoulder drops greater than 1 ½")
Critical Impact Attenuator Repair
Clear Vision Area Mowing
Removal of Large Debris and Dead Animals (from the traveled portion of the roadway)
Rest Area and Roadside Park Maintenance

Priority Group 2:

High Priority Surface Maintenance
High Priority Guardrail Repair
High Priority Sign Replacement
High Priority Drainage Repair
High Priority ROW Fence Repair
High Priority Shoulder Maintenance
High Priority Structural Maintenance
Adopt-A-Highway
Youth Corps in designated urban areas
Mowing (First Cycle)
Freeway Slope Mowing in designated urban areas
Litter Pickup in designated urban areas
Graffiti Removal in designated urban areas
Freeway Lighting Maintenance & Repair

Priority Group 3:

Mowing (Additional Cycles)
Brushing
Sweeping, beyond critical drainage areas
Litter Pickup, outside designated urban areas
Graffiti Removal, outside designated urban areas
Routine/Preventive Surface Maintenance
Routine/Preventive Guardrail Repair
Routine/Preventive Sign Replacement
Routine/Preventive Drainage Repair
Routine/Preventive Shoulder Maintenance
Routine/Preventive Structural Maintenance
Routine/Preventive Pump House Maintenance
Routine/Preventive Traffic Signal Maintenance
Youth Corps outside of designate urban areas
Non-motorized path maintenance



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 10/08/2019	Title: Traffic Control Orders
Submitted By: Doug Sayles	Department: Public Works
Brief Summary: Approval of Traffic Control Orders #54, #55, #56 and #57.	
Detailed Summary: To approve submitted Traffic Control Orders, #54, #55, #56 and #57 and authorize staff to remove/install various traffic control devices.	
Amount Requested: \$0	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve removal/installation of various Traffic Control Devices as outlined in the submitted Traffic Control Orders.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

City of Muskegon

Traffic Control Order

No. 54-(2019)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Install "Stop" signs on Houston Avenue at 5th Street. (Intersection becomes a 4-way stop).*

Location: *Houston Avenue @ 5th Street*

Recommendation:

_____ Date: ____/____/____
Director of Public Works

_____ Date: ____/____/____
Police Chief

_____ Date: ____/____/____
City Manager

Commission Approval (required for Permanent TCO only):

_____ Date: ____/____/____
Commission Action #

Installation/removal

Date assigned: ____/____/____

By: _____
Traffic Supervisor

Date completed: ____/____/____

By: _____
Traffic Department Employee

☐ **Temporary;** does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent;** requires Commission Action

City of Muskegon

Traffic Control Order

No. 55-(2019)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Install "Stop" signs on Houston Avenue at 7th Street. (Intersection becomes a 4-way stop).*

Location: *Houston Avenue @ 7th Street*

Recommendation:

_____ Date: ____/____/____
Director of Public Works

_____ Date: ____/____/____
Police Chief

_____ Date: ____/____/____
City Manager

Commission Approval (required for Permanent TCO only):

_____ Date: ____/____/____
Commission Action #

Installation/removal

Date assigned: ____/____/____ By: _____
Traffic Supervisor

Date completed: ____/____/____ By: _____
Traffic Department Employee

☐ **Temporary;** does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent;** requires Commission Action

City of Muskegon

Traffic Control Order

No. 56-(2019)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Install "Stop" signs on Webster Avenue at 1st Street. (Intersection becomes a 4-way stop).*

Location: *Webster Avenue @ 1st Street*

Recommendation:

_____ Date: ____/____/____
Director of Public Works

_____ Date: ____/____/____
Police Chief

_____ Date: ____/____/____
City Manager

Commission Approval (required for Permanent TCO only):

_____ Date: ____/____/____
Commission Action #

Installation/removal

Date assigned: ____/____/____ By: _____
Traffic Supervisor

Date completed: ____/____/____ By: _____
Traffic Department Employee

☐ **Temporary;** does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent;** requires Commission Action

City of Muskegon

Traffic Control Order

No. 57-(2019)

The following regulatory sign(s) shall be Installed/Removed at/from the location(s) specified below under location in accordance with the Michigan Manual of Uniform Traffic Control.

Device/Regulatory Sign(s) to be Installed/Removed: *Install "Stop" signs on 4th Street at Clay Avenue. (Intersection becomes a 4-way stop).*

Location: *4th Street @ Clay Avenue*

Recommendation:

_____ Date: ____/____/____
Director of Public Works

_____ Date: ____/____/____
Police Chief

_____ Date: ____/____/____
City Manager

Commission Approval (required for Permanent TCO only):

_____ Date: ____/____/____
Commission Action #

Installation/removal

Date assigned: ____/____/____

By: _____
Traffic Supervisor

Date completed: ____/____/____

By: _____
Traffic Department Employee

☐ **Temporary;** does not require Commission Action, good for 90-days from Installation/Removal Date.

☐ **Permanent;** requires Commission Action

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 10/8/19	Title: McCormick Sand - Change Order #001
Submitted By: Dave Baker	Department: Public Works
Brief Summary: Add ten (10) water service line replacements to contract (W-91838.2). McCormick Sand will replace 10 lead service lines at various locations within the City of Muskegon.	
Detailed Summary: Our previously approved Pilot Drinking Water Community Water Supply Grant has remaining funds that staff would like to use in order to maximize the number of lead service line replacements in the City. Change Order #001 represents \$48,387.10 worth of refundable grant money to replace 10 extra lead service lines at various locations throughout the City of Muskegon. McCormick Sand was the low bidder on the previously approved contract (February 26, 2019) and has agreed to hold their pricing for the additional locations.	
Amount Requested: \$48,387.10	Amount Budgeted: \$0 (Funded through grant revenue from EGLE)
Fund(s) or Account(s): 591-91838-5345	Fund(s) or Account(s):
Recommended Motion: Authorize staff to sign Change Order #001 to contract (W-91838.2) with McCormick Sand in the amount of \$48,387.10	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

CITY OF MUSKEGON
DETAILED CONTRACT CHANGE REQUEST

CONTRACTOR		CONTRACT						DATE	10/3/2019
McCormick Sand Inc.		W-91838.2 (MDEQ Lead Service Line Pilot Grant - Contract #2)						CHANGE ORDER No.	1
ITEM OF WORK DESCRIPTION, REASON, LOCATION OF CHANGE		UNIT OF MEASURE	QUANTITY PROPOSAL	QUANTITY AS BUILT	QUANTITY INCREASE +	QUANTITY DECREASE -	UNIT COST	AMOUNT INCREASE	AMOUNT DECREASE
1	Complete an additional ten (10) locations at the original contract price	EA	31		10		\$4,838.71	\$48,387.10	\$0.00
2								\$0.00	\$0.00
3								\$0.00	\$0.00
4								\$0.00	\$0.00



CHANGE REQUEST EFFECTIVE DATE: _____

TOTALS \$48,387.10 \$0.00

ORIGINAL CONTRACT PRICE: \$150,000.00

NET OF PREVIOUS CHANGE ORDERS: \$0.00

NET OF CURRENT CHANGE ORDER: \$48,387.10

REVISED CONTRACT PRICE: \$198,387.10

32.26%

ENGINEERING DEPARTMENT		CONTRACTOR APPROVAL	CITY OF MUSKEGON APPROVAL
		AUTHORIZED REPRESENTATIVE AND DATE	AUTHORIZED REPRESENTATIVE AND DATE
PREPARED BY	DATE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: October 8, 2019	Title: Park Storage Land Exchange
Submitted By: LeighAnn Mikesell	Department: Development Services
Brief Summary: Staff is requesting authorization to enter into an agreement with Catholic Charities West Michigan to exchange a portion of city owned property at 1713 Seventh Street for property owned by the diocese at 1095 Third Street.	
Detailed Summary: Catholic Charities West Michigan plans to construct a new building at the southeast corner of Park and W. Dale, near the Muskegon Rescue Mission and the population this organization serves. In exchange, the city will receive the property and structure located at the northwest corner of Third and Houston, in our developing Midtown area.	
Amount Requested: None	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Approve the land exchange agreement with Catholic Charities West Michigan and authorize the mayor and clerk 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:	

REAL ESTATE EXCHANGE AGREEMENT

This Real Estate Exchange Agreement ("**Agreement**"), is entered into effective as of _____ ("**Effective Date**"), by and between DAVID J. WALKOWIAK, BISHOP OF THE ROMAN CATHOLIC DIOCESE OF GRAND RAPIDS, MICHIGAN, IN TRUST FOR CATHOLIC CHARITIES WEST MICHIGAN, a Michigan nonprofit corporation (a/k/a Catholic Social Services of Muskegon), of 360 Division Avenue South, Grand Rapids, Michigan 49503 ("**CCWM**"), and the CITY OF MUSKEGON, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 ("**City**").

RECITALS

A. City owns certain real property located in the City of Muskegon more particularly described on **Exhibit A** attached to this Agreement, together with all the improvements, fixtures, easements, division rights, bonus division rights, re-division rights, hereditaments, and appurtenances associated with that real estate ("**Property A**").

B. CCWM owns certain real property located in the City of Muskegon more particularly described on **Exhibit B** attached to this Agreement, together with all the improvements, fixtures, easements, division rights, bonus division rights, re-division rights, hereditaments, and appurtenances associated with that real estate ("**Property B**").

C. The parties desire to exchange Property A and Property B subject to the following conditions, representations, and warranties below.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CCWM and City agree as follows:

1. **Property Exchange.** Subject to the terms and conditions of this Agreement, City agrees to convey, and CCWM agrees to accept from City, Property A. In exchange, subject to the terms and conditions of this Agreement, CCWM agrees to convey to City, and City agrees to accept from CCWM, Property B.

2. **Title.**

a. Property A Title. Within fifteen (15) days of the Effective Date, CCWM will cause a title commitment covering the Property A (the "**Property A Title Commitment**") to be prepared and delivered to CCWM by Transnation Title Company- Lakeshore Division, of 570 Seminole Road, Suite 102, Muskegon, Michigan ("**Title Insurer**"). CCWM will have ten (10) business days after receipt of the Property A Title Commitment to notify City in writing of CCWM's disapproval of any Schedule B exceptions shown on the Property A Title Commitment ("**Property A Disapproved Exceptions**"). If, on or before Closing, the Title Insurer notifies CCWM or City of any Schedule B exception in addition to the Schedule B exceptions shown in the Property A Title Commitment ("**Property A Additional Exceptions**"), the ten (10) business

day period with respect to Additional Exceptions will run from the date CCWM is given written notice of such Property A Additional Exceptions. City will have thirty (30) days from the date of receipt of any notice of disapproval to cause the Property A Disapproved Exceptions to be removed from the Property A Title Commitment or cause the Title Insurer to commit to insure against loss or damage that may be occasioned by the Property A Disapproved Exceptions, during which time the Closing will be delayed as necessary. If City is unwilling or unable to modify, remove or obtain a commitment for title insurance over Property A Disapproved Exceptions within such period, CCWM will notify City within five (5) days from the expiration of such 30-day period whether CCWM will either: (i) proceed to Closing and take title to Property A subject to the Property A Disapproved Exceptions, in which case the Property A Disapproved Exceptions will be deemed to have been waived by CCWM, or (ii) terminate this Agreement. The Closing Date will be delayed as necessary to permit the completion of all time periods provided for under this paragraph. Upon conveyance of title to CCWM on the Closing Date, CCWM may purchase a policy of title insurance (without standard printed exceptions) to be issued pursuant to the Property A Title Commitment, insuring CCWM's fee simple absolute title in Property A in the amount of twice of the most recent assessed value of Property A (or, if requested by CCWM, such other amount reasonable identified by CCWM), which policy of title insurance shall not contain any exceptions other than those shown on the Property A Title Commitment and not objected to by CCWM as Property A Disapproved Exceptions.

b. Property B Title. Within fifteen (15) days of the effective date, CCWM will cause a title commitment covering the Property B (the "**Property B Title Commitment**") to be prepared and delivered to City by Title Insurer. City will have ten (10) business days after receipt of the Property B Title Commitment to notify CCWM in writing of City's disapproval of any Schedule B exceptions shown on the Property B Title Commitment ("**Property B Disapproved Exceptions**"). If, on or before Closing, the Title Insurer notifies CCWM or City of any Schedule B exception in addition to the Schedule B exceptions shown in the Property B Title Commitment ("**Property B Additional Exceptions**"), the ten (10) business day period with respect to Property B Additional Exceptions will run from the date City is given written notice of such Property B Additional Exceptions. CCWM will have thirty (30) days from the date of receipt of any notice of disapproval to cause the Property B Disapproved Exceptions to be removed from the Property B Title Commitment or cause the Title Insurer to commit to insure against loss or damage that may be occasioned by the Property B Disapproved Exceptions, during which time the Closing will be delayed as necessary. If CCWM is unwilling or unable to modify, remove or obtain a commitment for title insurance over Property B Disapproved Exceptions within such period, City will notify CCWM within five (5) days from the expiration of such 30-day period whether City will either: (i) proceed to Closing and take title to Property B subject to the Property B Disapproved Exceptions, in which case the Property B Disapproved Exceptions will be deemed to have been waived by City, or (ii) terminate this Agreement. The Closing Date will be delayed as necessary to permit the completion of all time periods provided for under this paragraph. Upon conveyance of title to City on the Closing Date, City may purchase a policy of title insurance (without standard printed exceptions) to be issued pursuant to the Property B Title Commitment, insuring City's fee simple title in Property B in the amount of twice of the most recent assessed value of Property B (or such other amount reasonable identified by City), which policy of title insurance shall not contain any exceptions other than those shown on the Property B Title Commitment and any Property B Additional Exceptions.

3. **Due Diligence.**

a. Property A Diligence. Promptly after the Effective Date, City shall provide to CCWM, or make available for review by CCWM, copies of the following documents to the extent that they are in City's possession or control ("**City's Documents**"): (i) all permits, wetlands, and fill permits, zoning variances and approvals, and environmental reports with respect to Property A; (ii) all surveys of Property A; (iii) all leases, licenses, or occupancy agreements with respect to Property A ("**Leases**"); (iv) any notices with respect to Property A received from a governmental agency within the 3-year period preceding the Effective Date; and (v) all maintenance and other contracts affecting Property A ("**Contracts**"). At any time prior to Closing, CCWM may inspect Property A. Without limiting the generality of the foregoing, CCWM and CCWM's agents and contractors shall have the right, at CCWM's cost, to conduct an environmental assessment of Property A in one or more phases, including the procurement and analysis of samples of soil, groundwater, surface water, indoor air, or any other environmental medium, and any building component or other material located at Property A; provided, however, that prior to any Phase II investigation, CCWM shall first provide the scope of work to be conducted on Property B by its environmental consultants which scope shall be subject to the approval of the City. If the City fails or refuses to approve such scope, CCWM may terminate this Agreement by written notice to City. A copy of all environmental assessments and BEA reports will be provided to the City. CCWM shall have the right to interview employees and representatives of City who have or may have knowledge of conditions and events relevant to the operating history or environmental condition of Property A. Notwithstanding the foregoing, on and after the date of this Agreement, CCWM and its agents, employees and contractors shall have the right to enter Property A to perform any and all inspections, including, without limitation, site surveys, utility identification, geotechnical testing and soil borings. CCWM acknowledges that Property A may require repairs or maintenance and CCWM agrees to accept Property B in its present "AS IS" condition, with no warranties concerning its habitability, quality, condition, fitness for a particular purpose, or permitted use, except as specifically provided in this Agreement. CCWM shall conduct its inspections of Property A within ninety (90) days after the date of this Agreement.

b. Property B Diligence. At reasonable times upon reasonable advance notice to CCWM and prior to closing, City may inspect Property B. Without limiting the generality of the foregoing, City and City's agents and contractors shall have the right, at City's cost, to conduct an environmental assessment of Property B in one or more phases, including the procurement and analysis of samples of soil, groundwater, surface water, indoor air, or any other environmental medium, and any building component or other material located at Property B. City shall have the right to interview employees and representatives of CCWM who have or may have knowledge of conditions and events relevant to the operating history or environmental condition of Property B. City acknowledges that Property B may require repairs or maintenance and City agrees to accept Property B in its present "AS IS" condition, with no warranties concerning its habitability, quality, condition, fitness for a particular purpose, or permitted use, except as specifically provided in this Agreement. City shall conduct its inspections of Property B within ninety (90) days after the date of this Agreement.

4. **City's Representations and Warranties.** City represents and warrants to CCWM, which representations and warranties shall be true to the Closing Date, as follows:

a. There are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or, to the best of City's knowledge, threatened against or relating to Property A;

b. City, through the person(s) executing this Agreement, has full power and authority to enter into this Agreement, and to assume and perform all of City's obligations under this Agreement;

c. There are no agreements, contracts, or leases, written or oral, which affect Property A in any manner other than this Agreement and any agreements disclosed by the Property A Title Commitment;

d. There is no pending or, to the best of City's knowledge, proposed special assessment affecting or which may affect the whole or any part of Property A;

e. All necessary action to approve, execute, deliver, and perform this Agreement has been taken by City, and this Agreement is the valid and binding obligation of City, enforceable against City in accordance with its terms.

5. **CCWM's Representations and Warranties.** CCWM represents and warrants to City, which representations and warranties shall be true to the Closing Date, as follows:

a. There are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or, to the best of CCWM's knowledge, threatened against or relating to Property B;

b. CCWM, through the person(s) executing this Agreement, has full power and authority to enter into this Agreement, and to assume and perform all of CCWM's obligations under this Agreement;

c. There are no agreements, contracts, or leases, written or oral, which affect Property B in any manner other than this Agreement and any agreements disclosed by the Property B Title Commitment;

d. There is no pending or, to the best of CCWM's knowledge, proposed special assessment affecting or which may affect the whole or any part of Property B;

e. All necessary action to approve, execute, deliver, and perform this Agreement has been taken by CCWM, and this Agreement is the valid and binding obligation of CCWM, enforceable against CCWM in accordance with its terms.

6. **CCWM Contingencies.** The obligation of CCWM to close the acquisition of Property A and the transfer of Property B shall be contingent upon:

a. CCWM's satisfaction with the results of all inspections of Property A;

b. All representations and warranties of City set forth in this Agreement being true as of the Closing Date; and

c. City having timely performed and complied in all respects with all covenants, obligations, and agreements to be performed or complied with by City under this Agreement.

d. City obtaining all required approvals and establishing Property A as a separate legal parcel (separate from any adjacent property owned by City) with a unique tax parcel number and rezoning Property A as required under Paragraph 9 (Property A Parcel Split/Zoning) below.

e. CCWM obtaining all required governmental approvals for CCWM's anticipated development and use of Property A.

If one or more of the contingencies is not satisfied, and CCWM is not willing to waive the contingency(ies), then CCWM may terminate this Agreement by a written notice to City, in which case neither City nor CCWM shall have any further liability to the other under this Agreement.

7. **Condemnation.** If before Closing, anybody having the power of condemnation initiates proceedings to acquire by condemnation any portion of or interest in Property A or Property B, either CCWM or City may either (i) terminate this Agreement, or (ii) proceed to Closing and the transferring party will assign to acquiring party at the Closing any and all rights the transferring party may have in such proceeding and any condemnation award relating thereto.

8. **Closing.**

a. Closing Date. The Closing shall take place at the offices of the Title Insurer on a date designated by CCWM which date shall be on or before the date that is one hundred and eighty (180) days after the date of this Agreement (the "**Closing Date**").

b. Property A. At the time of Closing, City shall execute and deliver to CCWM a covenant deed conveying good, clear and marketable title to Property A subject only to those items shown on the Property A Title Commitment and not objected to by CCWM as Property A Disapproved Exceptions. The parties shall prorate, apportion and adjust as of the Closing Date, the property taxes and installments of assessments on a calendar year basis using the dates such taxes and/or installments of assessments are first billed. Any taxes and/or installments of assessments not yet billed for the calendar year in which the Closing occurs shall be estimated by using the prior calendar's year's billed taxes and/or installment of assessments. Transaction costs associated with the sale/purchase of Property A pursuant to this Agreement will be paid on or prior to Closing on the following basis: CCWM will be solely responsible for the cost of the title insurance policy. City will be solely responsible for the cost of any special title insurance endorsements City may obtain over any Property A Disapproved Exceptions, the cost of recording any title clearance documents or collateral discharges, all transfer taxes on the covenant deed, one half (1/2) of all closing fees or escrow fees charged by the Title Insurer, and the fees and expenses of City's attorneys and its designated representatives. CCWM will be solely responsible all recording fees

for the covenant deed, one half (1/2) of the costs of all closing fees or escrow fees charged by the Title Insurer, the cost of CCWM's inspections, investigations and tests by CCWM (excluding the cost of CCWM's environmental assessments and BEA for Property A which are paid by City)), and the fees and expenses of CCWM's attorneys. At Closing, CCWM and City shall deliver to the other such other documents or instruments as shall reasonably be required by such party's counsel or by the Title Insurer to consummate the transaction contemplated herein or to issue the policy of title insurance which, in the other party's counsel's opinion, does not increase such parties' liability or decrease such parties' rights or which are customarily provided in the sale and purchase of real estate similar to the Premises.

c. Property B. At the time of Closing, CCWM shall execute and deliver to CCWM a covenant deed conveying good, clear and marketable title to Property B subject only to those items shown on the Property B Title Commitment. The parties shall prorate, apportion and adjust as of the Closing Date, the property taxes and installments of assessments on a calendar year basis using the dates such taxes and/or installments of assessments are first billed. Any taxes and/or installments of assessments not yet billed for the calendar year in which the Closing occurs shall be estimated by using the prior calendar's year's billed taxes and/or installment of assessments. Transaction costs associated with the sale/purchase of Property B pursuant to this Agreement will be paid on or prior to Closing on the following basis. City will be solely responsible for the cost of the title insurance policy, any special title insurance endorsements City may obtain over any Property B Disapproved Exceptions, the cost of recording any title clearance documents or collateral discharges, all transfer taxes on the covenant deed, all recording fees for the covenant deed, all closing fees or escrow fees charged by the Title Insurer, the cost of the City's environmental assessments, inspections, investigations and tests by City, and the fees and expenses of City's attorneys, accountants, engineers, and consultants. At Closing, CCWM and City shall deliver to the other such other documents or instruments as shall reasonably be required by such party's counsel or by the Title Insurer to consummate the transaction contemplated herein or to issue a policy of title insurance which, in the other party's counsel's opinion, does not increase such parties' liability or decrease such parties' rights or which are customarily provided in the sale and purchase of real estate similar to the Premises.

9. **Property A Parcel Split/Zoning.** Within thirty (30) days after the date of this Agreement, the City shall, at City's sole expense: (i) obtain all required governmental approvals to establish Property A as a separate legal parcel (separate from any adjacent property owned by City) with a unique tax parcel number (City shall promptly provide to CCWM all applications, surveys and related information and documentation obtained by City to obtain such separation); and (ii) rezone Property A in a manner acceptable to CCWM and in such a manner so that CCWM's anticipated development and use of Property A is permitted by right without any required variance or special land use permit under local zoning.

10. **Leaseback of Property B.** At the Closing, CCWM and City shall enter into a lease agreement pursuant to which City shall lease Property B exclusively to CCWM for an initial term that shall commence on the date of the Closing and shall continue until the earlier of: two years after the date of the Closing; or (ii) sixty (60) days after the date that CCWM obtains a certificate of occupancy for its new facility to be constructed on Property A. In the event that CCWM has not obtained a certificate of occupancy for its new facility to be constructed on Property A more

than sixty (60) days' prior to the date that is two years after the date of the Closing, CCWA shall have the right to extend the Lease for three (3) additional periods of ninety (90) days. The lease shall be a gross lease with rent equal to One Dollar (\$1.00) (during the initial term) and shall otherwise be upon terms agreeable to CCWM. In the event that the lease is extended beyond the initial term, the rent for the first ninety (90) day extension period shall be adjusted to fair market (triple net) rent for Property B as reasonably determined by City and CCWM. The rent for each additional ninety (90) day extension period shall increase by 10% of the previous extension period. The lease shall be prepared by counsel for CCWM and shall be subject to review and comment by City.

11. Miscellaneous.

a. Notices. Any and all notices or other communications or deliveries required or permitted to be given or made pursuant to any of the provisions of this Agreement shall be deemed to have been duly given or made for all purposes if (i) sent by first class mail, postage prepaid, (ii) sent by recognized overnight courier, postage prepaid, or (iii) hand delivered, as follows:

If to the City:

City of Muskegon
933 Terrace Street
Muskegon, Michigan 49442
Attention: Frank Peterson, City Manager
With a copy to:
Benjamin P. Reider
Parmenter Law
601 Terrace Street, Muskegon, Michigan 49443

If to CCWM:

David J. Walkowiak, Bishop of the Roman Catholic Diocese of Grand Rapids,
Michigan, in trust for Catholic Charities West Michigan
360 Division Avenue South
Grand Rapids, Michigan 49503
Attention: Mike Lown, Chancellor
With a copy to:
James Rabaut
Warner Norcross + Judd LLP
150 Ottawa N.W., Grand Rapids, Michigan 49503

Or at such other address as any party may specify by written notice given to the other party in accordance with this paragraph. The date of giving of any such notice shall be the date three (3) days following the posting of the mail, the date following deposit with the overnight courier service, or the date of hand delivery.

b. Default. Time is of the essence of this Agreement, except that CCWM may waive this provision for the purpose of meeting conditions and contingencies under this Agreement. If CCWM defaults in CCWM's obligations under this Agreement so that the Closing

does not occur as scheduled, then City may terminate this Agreement by notice to CCWM, in which case neither City nor CCWM shall have any further liability to the other under this Agreement. Alternatively, City may pursue any other right or remedy available at law or in equity, including, without limitation, injunctive relief and specific performance of this Agreement. If City defaults in City's obligations under this Agreement so that the Closing does not occur as scheduled, then CCWM may terminate this Agreement by notice to City, in which case neither City nor CCWM shall have any further liability to the other under this Agreement. Alternatively, CCWM may pursue any other right or remedy available at law or in equity, including, without limitation, injunctive relief and specific performance of this Agreement.

c. CCWM/City. Nothing contained herein or in any other instrument or agreement between CCWM and City shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between CCWM and City or of any relationship other than as specifically provide herein.

d. Costs, Expenses and Attorneys' Fees. The prevailing party shall be entitled to recover from the other party all reasonable costs, expenses and reasonable attorney fees that may be incurred or paid by the prevailing party in enforcing the covenants and agreements in this Agreement.

e. Successors: Assigns. This Agreement and each and all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of CCWM and City, and their respective successors and assigns. No third party, other than such permitted successors and assigns, shall be entitled to enforce any term, covenant or condition of this Agreement or have any rights hereunder.

f. Provisions Severable. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable under applicable law, then the remainder hereof and the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby.

g. Amendment. Neither this Agreement nor any of the terms, covenants or conditions hereof may be modified or amended, except by an agreement in writing, duly executed and delivered by the party against whom enforcement of such modification or amendment is sought.

h. Headings. The headings of the paragraphs and subparagraphs of this Agreement are for convenience only and shall in no way affect the construction or effect of any of the terms, covenants or conditions hereof.

i. Brokers. City and CCWM each agrees and represents to the other that no broker is involved in the transactions contemplated by this Agreement who is entitled to a commission. If a broker makes a claim for remuneration in connection with the transactions contemplated by this Agreement, City and CCWM each shall indemnify and hold harmless the other from any amount that the other may be required to pay to a broker that the other did not

retain, including, without limitation, reasonable attorney fees expended to defend against such claim.

j. Applicable Law. This Agreement and each and all of the terms, covenants and conditions hereof shall be interpreted in accordance with and governed in all respects by the internal laws of the state of Michigan.

k. Counterparts. This Agreement may be signed in one or more counterparts, and by different parties to this Agreement on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

l. Short Form. At the request of CCWM, City and CCWM will execute and record a Short Form of this Agreement evidencing the Real Estate Exchange on a form reasonably determined by CCWM.

m. Entire Agreement. This Agreement and the exhibits to this Agreement contain all of the representations and statements by City and CCWM to one another and express the entire understanding between City and CCWM with respect to the matters described herein. All prior and contemporaneous communications concerning such matters are merged in and replaced by this Agreement.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, CCWM and City have caused this Agreement to be duly executed and delivered as of the Effective Date.

CCWM:

DAVID J. WALKOWIAK, BISHOP OF THE ROMAN
CATHOLIC DIOCESE OF GRAND RAPIDS, MICHIGAN, IN
TRUST FOR CATHOLIC CHARITIES WEST MICHIGAN

CITY:

CITY OF MUSKEGON, a Michigan municipal corporation

By: _____
Stephen Gawron
Its: Mayor

And By: _____
Ann Meisch
Its: City Clerk

EXHIBIT A

Property A

CITY OF MUSKEGON REVISED PLAT OF 1903 COM E LN BLK 450 AT POINT 10 FT S OF NE COR LOT 9 FOR POB TH W ALONG CL OF 20 FT VAC ALLEY 174.35 FT TO POINT IN CL 9 FT E OF E LN LOT 6 SD BLK 450 & 10 FT S OF NE COR LOT 6 SD BLK 450 (SD VAC ALLEY REFERRED TO: RNG E/W FROM SEVENTH ST TO E LN LOT 6 BLK 450) TH N ALNG CL OF VAC ALLEY RNG N/S FROM DALE AVE THRU BLK 450 259.21 FT TO S LN DALE AVE TH E 174.45 FT TO E LN BLK 450 TH S ALNG E LN SD BLK 258.95 FT TO POB -BEING ALL LOTS 10-14 BLK 450 INCL E 1/2 VAC ALLEY ABUTTING SD LOTS & N 1/2 OF VAC ALLEY RNG E/W ABUTTING LOT 10 BLK 450 ALSO COM E LN BLK 450 AT POINT 10 FT S OF NE COR LOT 9 SD BLK FOR POB TH S ALONG E LN SD LOT 9 & LOT 8 SD BLK & ALONG E LN IF EXTENDED S 110.08 FT TH W PAR WITH S LN SD BLK 450 186.7 FT TH N PAR WITH E LN SD BLK 450 64.3 FT TH W 13.25 FT TH N PAR WITH E LN SD BLK 2.15 FT TH W 148.72 FT TO W LN SD BLK AT A POINT 303.27 FT TO NW COR SD BLK TH N ALNG W LN SD BLK 450 303.27 FT TO NW COR SD BLK 450 TH E ALNG N LN 174.35 FT TO CL OF VAC ALLEY RNG N/S FROM DALE AVE THRU SD BLK 450 TH S ALNG CL SD ALLEY 259.21 FT TO POINT ON CL VAC ALLEY SD CL BEING 9 FT E OF E LN LOT 6 SD BLK 450 (SD VAC ALLEY REFERRED TO RNG E/W FROM SEVENTH ST TO E LN LOT 6 SD BLK 450) TH W 9 FT ALNG CL OF VAC ALLEY TO POINT 10 FT S OF NE COR LOT 6 TH E ALNG CL VAC ALLEY 183.35 FT TO POB- BEING ALL LOTS 1-6, 8 & PART LOTS 7 & 9 SD BLK 450 & THAT PART VAC ALLEY LYING S OF LN SITUATED 20 FT S OF N LN LOTS 6 & 9 ALSO BEING PART OF VAC LARCH AVE & W 1/2 VAC ALLEY E OF LOTS 1-5, PART LOT 6 & S 1/2 OF E/W VAC ALLEY AS HEREIN ABOVE REFERRED TO SUBJECT TO EASEMENTS
RECORDED 151/472-482

AND

CITY OF MUSKEGON REVISED PLAT OF 1903 PART OF BLKS 450 460 & LARCH AVE VAC COM AT NE COR BLK 460 TH N 45.95 FT TH W 186.7 FT TH N 64.3 FT TH W 13.25 FT TH N 2.15 FT TH W 148.72 FT TO W LINE BLK 450 AT A PT 303.27 FT S OF NW COR SAID BLK TH S TO N LINE GT R/W TH SELY ALONG SAID R/W TO E LINE BLK 460 TH N TO BEG

EXHIBIT B

Property B

PARCEL 1:

LOT 9, EXCEPT THE WESTERLY 15 FEET THEREOF, AND ENTIRE OF LOTS 10, 11, 12 AND 13, BLOCK 350 OF THE REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, EXCEPT A TRIANGULAR PARCEL OF LAND LOCATED IN THE SOUTHEAST CORNER OF LOT 13, DESCRIBED AS FOLLOWS: COMMENCE AT THE SOUTHEAST CORNER OF SAID LOT 13, BLOCK 350 AT THE INTERSECTION OF THIRD STREET AND HOUSTON AVENUE FOR BEGINNING; THENCE NORTHWESTERLY ALONG THIRD STREET 3.85 FEET; THENCE SOUTHERLY TO HOUSTON AVENUE TO A POINT 3.85 FEET SOUTHWESTERLY OF POINT OF BEGINNING; THENCE NORTHEASTERLY TO POINT OF BEGINNING. TOGETHER WITH THE RIGHT OF REVERSION AS TO THAT PART OF LOT 13 DEEDED FOR HIGHWAY PURPOSES TO THE CITY OF MUSKEGON IN THE INSTRUMENT RECORDED FEBRUARY 21, 1945 IN LIBER 482, PAGE 51. SUBJECT TO A PERPETUAL, NONEXCLUSIVE, EASEMENT FOR MEANS OF INGRESS AND EGRESS ACROSS THE WESTERLY 1/2 OF LOT 10 AND LOT 9, EXCEPT THE WESTERLY 15 FEET THEREOF.

PARCEL 2:

ENTIRE OF LOT 1, BLOCK 350 OF THE REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, AS RECORDED IN LIBER 3 OF PLATS, PAGE 71, MUSKEGON COUNTY RECORDS.

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: October 8, 2019	Title: Community Relations Committee Recommendations
Submitted By: Ann Marie Meisch	Department: Clerk
Brief Summary: To accept the resignations and appointments as follows: resignations of Ann Funk from the Lakeside Business Improvement District and Larry Boersma from the Farmers Market Advisory Board. Appointments of Samantha Ferguson to the CDBG/Citizen's District Council and Kathy Fearnley to the Lakeside Business Improvement District.	
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 concur with the recommendations of the Community Relations Committee and approve the resignations and appointments.	
For City Clerk Use Only:	
Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 10/08/2019	Title: Recreational Marihuana Regulatory Ordinance – 2 nd Reading
Submitted By: Mike Franzak	Department: Planning
Brief Summary: Staff initiated request to amend the City Code of Ordinances and adopt a Recreational Marihuana Regulatory Ordinance under the Michigan Regulation and Taxation of Marihuana Act.	
Detailed Summary:	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the Recreational Marihuana Regulatory Ordinance as part of the City Code of Ordinances.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Michigan Regulation and Taxation of Marihuana Act (MRTMA)

General Notes

The State will begin processing applications November 1. Municipalities must pass an opt out resolution if they do not want to permit MRTMA businesses. Those that do want to permit them should pass a regulatory and zoning ordinance.

MMFLA (Medical) and MRTMA (Recreational) license holders under common ownership may locate at the same location.

Growing outside is permissible under certain circumstances. Staff does not encourage these at this time due to the location of the proposed district and possible environmental concerns.

Please see the attached Emergency Rules white paper established July 3, 2019 by the Michigan Department of Licensing and Regulatory Affairs. The paper established the following license types.

Staff has prepared a proposed zoning ordinance. It is an amendment to the existing Medical Marihuana Facilities Overlay District and would include regulations for both Medical and Recreational Marihuana Facilities.

Please see the Social Equity Program attachment.

MRTMA License Types

1. Grower
 - Class A – 100 plant limit
 - Class B – 500 plant limit
 - Class C – 2,000 plant limit
2. Processor
 - May purchase marihuana only from a marihuana grower or a marihuana processor and sale of marihuana-infused products or marihuana only to a marihuana retailer or another marihuana processor.
3. Secure transporter
 - May store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana establishments for a fee upon request of a person with legal custody of that marihuana or money.
4. Retailer
 - May purchase or transfer of marihuana only from a marihuana grower or marihuana processor and sale or transfer to only an individual 21 years of age or older. Referred to as provisioning center under MMFLA.
5. Safety compliance facility
 - May take marihuana from, test marihuana for, and return marihuana to only a licensed marihuana grower, marihuana processor, marihuana retailer, or marihuana microbusiness.
6. Microbusiness
 - May cultivate up to 150 plants
 - May process and package marihuana

- May conduct retail sales to customers but not other marihuana establishments

Special License Types – The Emergency Rules established these additional license types.

7. Marihuana Event Organizer – Licensee may apply for Temporary Marihuana Event licenses from the Michigan Regulatory Agency (MRA).
8. Temporary Marihuana Event – This license allows a Marijuana Event Organizer to run an event, which has been approved by the local municipality, where the onsite sale or consumption of marijuana products, or both, are authorized at a specific location for a limited time. Licensed Retailers and Microbusinesses may participate. The Marijuana Event Organizer is required to hire security and ensure that all rules and requirements for onsite consumption of marijuana products are followed. Events may last 1-7 days. May only be held at a venue expressly approved by a municipality for the purpose of holding a temporary marihuana event
9. Designated Consumption Establishment – Allows the license holder, with local approval, to operate a commercial space that is licensed by the MRA and authorized to permit adults 21 years of age and older to consume marijuana and marijuana products on premises. A Designated Consumption Establishment license does not allow for sales or distribution of marijuana or marijuana product, unless the license holder also possesses a Retailer or Microbusiness license. A person that allows consumption of marihuana products on the premises of a nonresidential location and charges a fee for entry, sells goods or services while individuals are consuming on the premises, or requires membership for entry shall acquire a designated consumption establishment or temporary marihuana event license.
10. Excess Marihuana Grower – Allows a licensee who already holds five adult-use Class C Grower licenses to expand their allowable marijuana plant count.

Marihuana Excise Tax Fund

The tax fund for the MMFLA (Medical) has sunset since recreational marihuana has passed. Municipalities were set to receive a distribution of the fund created by the 3% sales tax. Now, only municipalities that have operating “retailers” and “microbusinesses” will get a share of the excise tax fund, which is created from a 10% tax.

	MMFLA	MRTMA
Annual Gross Retail Sales	\$1,000,000,000	\$1,000,000,000
Applicable Excise Tax Rate	3 percent	10 percent
Amount of Excise Tax Fund	\$30,000,000	\$100,000,000
Less Allocation for Veterans' Health Research until 2022	$\begin{array}{r} 0 \\ \hline \$30,000,000 \end{array}$	$\begin{array}{r} -\$20,000,000 \\ \hline \$80,000,000 \end{array}$
Percentage Allocated to Municipalities	25 percent	15 percent
Amount Available for Municipalities	\$7,500,000	\$12,000,000
1 percent of facilities or retail establishments in municipality	\$75,000	\$120,000

State License Fee's – In addition to a one-time \$6,000 enrollment fee, the following permit fees exist.

State License Type	Initial Licensure Fee	Renewal Fee
Class A Marihuana Grower	\$4,000	Bottom 33% - \$3,000 Middle 33% - \$4,000 Top 33% - \$5,000
Class B Marihuana Grower	\$8,000	Bottom 33% - \$6,000 Middle 33% - \$8,000 Top 33% - \$10,000
Class C Marihuana Grower	\$40,000	Bottom 33% - \$30,000 Middle 33% - \$40,000 Top 33% - \$50,000
Excess Marihuana Grower	\$40,000	Bottom 33% - \$30,000 Middle 33% - \$40,000 Top 33% - \$50,000
Marihuana Microbusiness	\$8,000	Bottom 33% - \$6,000 Middle 33% - \$8,000 Top 33% - \$10,000
Marihuana Processor	\$40,000	Bottom 33% - \$30,000 Middle 33% - \$40,000 Top 33% - \$50,000
Marihuana Retailer	\$25,000	Bottom 33% - \$20,000 Middle 33% - \$25,000 Top 33% - \$30,000
Marihuana Secure Transporter	\$25,000	Bottom 33% - \$20,000 Middle 33% - \$25,000 Top 33% - \$30,000
Marihuana Safety Compliance Facility	\$25,000	Bottom 33% - \$20,000 Middle 33% - \$25,000 Top 33% - \$30,000
Marihuana Event Organizer	\$1,000	\$1,000
Temporary Marihuana Event	See Rule 63	N/A
Designated Consumption Establishment	\$1,000	\$1,000

DRAFT
09/17/19

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

PERMITTING RECREATIONAL MARIHUANA ESTABLISHMENTS

1. Chapter 34, Article IV of the Code of Ordinances of the City of Muskegon, Michigan, Sections 34-_____ through 34-_____ are adopted as follows:

Sec. 34-_____ Purpose and Intent.

It is the intent of this ordinance to opt-in to the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967).

Section 34- _____ Definitions.

Words used in this Ordinance shall have the meaning as defined in the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967), as may be amended.

Sec. 34-_____ Recreational Marihuana Opt-In Provision

Pursuant to Section 6 of the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967), the City will authorize Permits for marihuana establishments.

Sec. 34-_____ Permit Required for Recreational Marihuana Activity.

(1) Any person or entity that wishes to operate as a marihuana establishment pursuant to the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967) in the City shall obtain a Permit from the City and must obtain a State Operating License prior to opening or operating.

(2) The application and inspection fee for the Permit required by this section shall be set from time to time by the City by resolution.

(3) In addition to an annual reapplication and inspection fee, the City may assess an annual fee of no more than \$5,000.00 to help defray the administrative and enforcement costs associated with the operation of the marihuana establishments operating in the City.

(4) No Permit issued under this section shall be transferable.

(5) All Permits issued under this section shall be renewed annually and subject to annual inspection and renewal fees as set from time to time by the City by resolution.

(6) The City may limit the number of Permits issued under this section, and may revise this limit from time to time.

(7) A person or entity that receives a Permit under this section shall display its Permit and, when issued, its State License in plain view clearly visible to City officials and State authorized agents.

(8) No person or entity that opened or operated a facility doing business or purporting to do business as a marihuana establishment prior to the adoption of this ordinance shall be considered a lawful use.

Sec. 34-____ Recreational Marihuana Location Requirements.

(1) Marihuana establishments are permitted in those zones and subject to requirements provided for in the City's Zoning Ordinance.

(2) The marihuana establishments shall meet all applicable written and duly promulgated standards of the City and, prior to opening, Applicants shall demonstrate to the City that the location meets the rules and regulations promulgated by the State, if any.

Sec. 34-____ Application Procedure.

(1) All Applicants for Permits required by this section shall file an application with the Clerk. This application shall be signed by the Applicant if an individual, or by all partners if a partnership, by a managing member if a limited liability company, or by the president of a corporation.

(2) The Applicant may be requested to provide any information required by the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018, (MCS Sections 333.27951 through 333.27967).

(3) The Permit shall be approved if the Applicant meets all City requirements unless a due diligence investigation discloses tangible evidence that the conduct of the Applicant's business would pose a substantial threat to the public health, safety, or general welfare.

Sec. 34-____ Permit Revocation and Review.

(1) A Permit granted under this section may be revoked or not renewed for any of the following reasons:

- (a) Any fraud or misrepresentations contained in the Permit application;
- (b) Any knowing violation of this ordinance;
- (c) Loss of the Applicant's State Medical Marihuana Facility License;
- (d) Failure of the Applicant to obtain a State Medical Marihuana Facility License within a reasonable time after obtaining a Permit under this section;
- (e) Conducting business in an unlawful manner or in such a way as to constitute a menace to the health, safety, or general welfare of the public;
- (f) The violation of any of the conditions of issuance or continuation of a certificate of registration;
- (g) Fraud, misrepresentation or any false statement made in the operation of the business;
- (h) Failure to pay personal property taxes, or timely file documentation or returns required for such taxes;
- (i) Failure to pay city income taxes, failure to withhold city income tax from employees, failure to remit to the City withheld city income taxes, or timely file documentation or returns required for such taxes;
- (j) Failure to pay any outstanding amounts owed the city (such as fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment, installments, etc.);
- (k) Failure to pay registration fees imposed pursuant to this chapter and resolution of the city commission;

- (l) Failure or inability of an applicant to meet and satisfy any of the requirements and provisions of this chapter;
- (m) Failure to allow inspection of the business premises at a reasonable time; or
- (n) Failure to allow inspection of hazardous material storage records at a reasonable time.

2. This Ordinance is to become effective ten (10) days after adoption.

Ayes:

Nays:

First Reading:

Second Reading:

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the ____ day of _____, 2019, at which meeting a quorum was present and remained throughout, and that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Date: _____, 2019

Ann Marie Meisch, MMC
City Clerk

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2019, the City Commission of the City of Muskegon amended Chapter _____, Article _____ of the Muskegon City Code, summarized as follows:

1. Section _____ is amended to provide _____.
2. Section _____ is amended to add _____.

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

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

Published: _____, 2019

CITY OF MUSKEGON

By _____
Ann Marie Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

PROHIBITION OF RECREATIONAL MARIHUANA ESTABLISHMENTS

1. Chapter 34, Article IV of the Code of Ordinances of the City of Muskegon, Michigan, Sections 34-_____ through 34-_____ are adopted as follows:

Sec. 34-_____ Purpose and Intent.

It is the intent of this ordinance to opt-out of the Michigan Regulation and Taxation of Marihuana Act, being Initiated Law 1 of 2018 (MCL Sections 333.27951 through 333.27967).

Section 34-_____ Definitions.

Words used herein shall have the definitions as provided for in Initiated Law 1 of 2018, MCL 333.27951 *et seq.*, as may be amended.

Section 34-_____ No Marihuana Establishments.

The City of Muskegon hereby prohibits all marihuana establishments within the boundaries of the City pursuant to Initiated Law 1 of 2018, MCL 333.27951 *et seq.*, as may be amended.

Section 34-_____ Violations and Penalties

1. Any person who disobeys, neglects or refuses to comply with any provision of this ordinance or who allows or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. A violation of this ordinance is deemed to be a nuisance per se.
2. A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500, in the discretion of the Court. The foregoing sanctions shall be in addition to the rights of the City to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator

- shall pay costs which may include all expenses, direct or indirect, which the City incurs in connection with the municipal civil infraction.
3. Each day during which any violation continues shall be deemed a separate offense.
 4. In addition, the City may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.
 5. This ordinance shall be administered and enforced by the Muskegon Police Department, Zoning Administrator or by such other person(s) as designated by the City Commission from time to time.

Section 34- _____ Severability

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

2. This Ordinance is to become effective ten (10) days after adoption.

Ayes:

Nays:

First Reading:

Second Reading:

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the ____ day of _____, 2019, at which meeting a quorum was present and remained throughout, and that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Date: _____, 2019

Ann Marie Meisch, MMC

City Clerk

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2019, the City Commission of the City of Muskegon amended Chapter _____, Article _____ of the Muskegon City Code, summarized as follows:

1. Section _____ is amended to provide _____.
2. Section _____ is amended to add _____.

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

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

Published: _____, 2019

CITY OF MUSKEGON

By _____
Ann Marie Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 10/08/19	Title: Amendment to the Medical Marihuana Facilities Overlay District to also allow Recreational Marihuana facilities – 2 nd Reading
Submitted By: Mike Franzak	Department: Planning
Brief Summary: Staff initiated request to amend Section 2330 of the zoning ordinance, the Medical Marihuana Facilities Overlay District, to also allow for Recreational Marihuana facilities under the Michigan Regulation and Taxation of Marihuana Act.	
Detailed Summary: Staff is proposing to amend the current Medical Marihuana Facilities Overlay District to also allow for Recreational Marihuana Facilities. The building and site requirements are essentially the same for recreational and medicinal facilities and they would be allowed within the same overlay district, as depicted on the map. The Planning Commission voted 7-1 in favor of recommending approval of the ordinance.	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the amendments to Section 2330 of the Zoning Ordinance to also allow for Recreational Marihuana Facilities.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Deletions are in ~~red~~, additions are highlighted.

SECTION 2330: ~~MEDICAL~~ MARIHUANA FACILITIES OVERLAY DISTRICT

A ~~Medical~~ Marihuana Facilities Overlay District is hereby created as outlined in Figures 23-2. Within said overlay district only, Medical Marihuana Facilities and Recreational Marihuana Facilities to the extent licensed pursuant to City Code Sections 34-201 through 34-208 and (to be determined) are permitted.

A. Overlay District:

1. Location: Please see Figure 23-2 for the location of the overlay district. Within the entire overlay district, licenses for Provisioning Centers, Growers, Processors, Secure Transporters and Safety Compliance Facilities are permitted for Medical Marihuana Facilities. A smaller area within the overlay district allows for Recreational Marihuana licenses for Retailers, Microbusiness, Designated Consumption Establishments, Temporary Marihuana Events, Growers, Processors, Secure Transporters and Safety Compliance Facilities.

B. Grower, Excess Grower, and Processor Requirements:

1. Signage. Signage shall be limited to one sign, no larger than 25 square feet and shall not use the word marihuana/marijuana, cannabis or any other word or phrase which would depict marihuana/marijuana; nor may pictures of a leaf or leaves, green cross or any other rendering which would depict marihuana/marijuana be displayed on a sign or any part of the building.
2. Building and Site Amenities. All Grower and Processor facilities must meet the following amenity requirements:
 - a. Bay doors. Buildings must have bay doors in which a secure transport vehicle can enter for delivery.
 - b. Canopy. Buildings must have a canopy or decorative awning over the main entrance to the building.
 - c. Lighting. There shall be ornamental lighting on the exterior of the building at all ingress and egress doors. There shall also be at least one decorative street lamp with banner brackets every 30 feet of linear road frontage. The Zoning Administrator may require these lamps to be located off-site within the overlay district to create a cohesive look for the district.
 - d. Landscaping plan. Decorative landscaping shall be provided with irrigation. All new construction projects shall require underground sprinkling. Please see Part G, Landscaping Requirements.
 - e. Street furniture/amenities. There shall be at least one bench, bike rack, trash can or bus shelter located on site. The Zoning Administrator may require any of these over another to keep a diversified look throughout the district. Properties that cannot meet these requirements because of site conditions may allow the Zoning Administrator to locate these amenities anywhere within the district or within 500 feet of its boundaries.
 - f. Carbon filtration system. The building shall be equipped with an activated carbon filtration system for odor control and be maintained in working order.
3. Waste Disposal Plan. A plan must be approved for the disposal of waste, chemicals and unused plant material.
4. Security. There must be a security presence in place on the property at all times, either by licensed security guard(s) and/or security cameras. A floor plan with security details is required.

C. Provisioning Center, **Retailer, Microbusiness and Designated Consumption Establishment** Requirements:

1. Hours. ~~Provisioning Centers may operate between the hours 8 am and 8 pm.~~

Provisioning Centers, Retailers and Microbusinesses and Designated Consumption Establishments may operate between the hours 8 am and 12 am.

2. Signage. Signage shall be limited to one sign, no larger than 25 square feet and shall not use the word marihuana/marijuana, cannabis or any other word or phrase which would depict marihuana/marijuana; nor may pictures of a leaf or leaves, green cross or any other rendering which would depict marihuana/marijuana be displayed on a sign or any part of the building. Windows shall remain free and clear of all advertising.
3. Building and Site Amenities. All Provisioning Centers, **Retailers, Microbusinesses and Designated Consumption Establishments** must meet the following amenity requirements:
 - a. ~~Bay doors. Buildings must have bay doors in which a secure transport vehicle can enter for delivery.~~
 - b. Canopy. Buildings must have a canopy or decorative awning over the main entrance to the building.
 - c. Security shutters. The interior of all windows shall require security shutters that give the appearance of shutters or window shades. Metal bars and gates are prohibited.
 - d. Lighting. There shall be ornamental lighting on the exterior of the building at all ingress and egress doors. **There shall also be at least one decorative street lamp with banner brackets every 30 feet of lineal road frontage. The Zoning Administrator may require these lamps to be located off-site within the overlay district to create a cohesive look for the district.**
 - e. Landscaping plan. Decorative landscaping shall be provided with irrigation. All new construction projects shall require underground sprinkling. **Please see Part G, Landscaping Requirements.**
 - f. **Street furniture/amenities. There shall be at least one bench, bike rack, trash can or bus shelter located on site. The Zoning Administrator may require any of these over another to keep a diversified look throughout the district. Properties that cannot meet these requirements because of site conditions may allow the Zoning Administrator to locate these amenities anywhere within the district or within 500 feet of its boundaries.**
 - g. Carbon filtration system. The building shall be equipped with an activated carbon filtration system for odor control and be maintained in working order.
4. Indoor Activities. All activities of a provisioning center shall be conducted within the structure and out of public view. Walk-up and drive thru windows are not permitted.
5. Security. There must be a security presence in place on the property at all times, either by licensed security guard(s) and/or security cameras. A floor plan with security details is required.

D. Safety Compliance Facility Requirements:

1. Indoor Activities. All activities of a marihuana safety compliance facility shall be conducted within the structure and out of public view.
2. Building and Site Amenities. All Safety Compliance Facilities must meet the following amenity requirements:
 - a. Canopy. Buildings must have a canopy or decorative awning over the main entrance to the building.
 - b. Lighting. Ornamental lighting is required on the exterior of the building at all ingress and egress doors. There shall also be at least one decorative street lamp with banner brackets every 30 feet of lineal road frontage. The Zoning Administrator may require these lamps to be located off-site within the overlay district to create a cohesive look for the district.
 - c. Landscaping Plan. Decorative landscaping shall be provided and all landscaping shall be irrigated. All new construction projects shall require underground sprinkling. Please see Part G, Landscaping Requirements.
 - d. Street furniture/amenities. There shall be at least one bench, bike rack, trash can or bus shelter located on site. The Zoning Administrator may require any of these over another to keep a diversified look throughout the district. Properties that cannot meet these requirements because of site conditions may allow the Zoning Administrator to locate these amenities anywhere within the district or within 500 feet of its boundaries.
3. Security. There must be a security presence in place on the property at all times, either by licensed security guard(s) and/or security cameras. A floor plan with security details is required.
4. Chemical waste and plant disposal plan. A list of all chemicals used in testing and how they will be disposed of must be provided. The plan must also show how marihuana plants and products will be disposed.

E. Secure Transporter Requirements:

1. Storage. Marihuana and supplies, materials or money shall not be kept in any secure transport vehicle overnight. Outdoor storage, excluding transport vehicles is prohibited.
2. Building and Site Amenities. All Secure Transporter buildings must meet the following amenity requirements:
 - a. Canopy. Buildings must have a canopy or decorative awning over the main entrance to the building.
 - b. Lighting. Ornamental lighting is required on the exterior of the building at all ingress and egress doors. There shall also be at least one decorative street lamp with banner brackets every 30 feet of lineal road frontage. The Zoning Administrator may require these lamps to be located off-site within the overlay district to create a cohesive look for the district.
 - c. Landscaping Plan. Decorative landscaping shall be provided and all landscaping shall be irrigated. All new construction projects shall require underground sprinkling. Please see Part G, Landscaping Requirements.
 - d. Street furniture/amenities. There shall be at least one bench, bike rack, trash can or bus shelter located on site. The Zoning Administrator may require any of these over another to keep a diversified look throughout the district. Properties that cannot meet these requirements because of site conditions may allow the Zoning Administrator to locate these amenities anywhere within the district or within 500 feet of its boundaries.

3. Security. There must be a security presence in place on the property at all times, either by licensed security guard(s) and/or security cameras. A floor plan with security details is required.

F. Temporary Marihuana Event Requirements:

1. Temporary Marihuana Events may be held within the allowed area for Recreational Marihuana Facilities, including parking lots and the public right-of-way, with the issuance of all necessary local and state permits.

G. Landscaping Requirements:

1. All required front setbacks shall be landscaped with a minimum of two canopy or shade trees, four understory or evergreen trees and four shrubs, for each 30 lineal feet of road frontage. Access ways from public rights-of-way through required landscape strips shall be permitted, but such access ways shall not be subtracted from the lineal dimension used to determine the minimum number of trees and shrubs required.
2. All terraces (area between street and sidewalk) shall be landscaped with a minimum of one canopy tree for each 20 lineal feet of road frontage.

Properties that cannot meet these landscaping requirements because of site conditions may allow the Zoning Administrator to locate the required landscaping anywhere within the overlay district or within 500 feet of its boundaries. Required understory trees, evergreen trees and shrubs may be replaced with canopy trees within the terrace at a 1:1 ratio.

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2330 of the zoning ordinance to amend the Medical Marihuana Facilities Overlay District to include Recreational Marihuana facilities, pursuant to the City's Regulatory Marihuana Facilities Ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

That Section 2330, the Medical Marihuana Facilities Overlay District is hereby amended and renamed the Marihuana Facilities Licensing Overlay District and now allows provisions for Recreational Marihuana Facilities.

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 24th day of September, 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2019. _____

Ann Meisch, MMC

Clerk, City of Muskegon

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

CITY OF MUSKEGON

NOTICE OF ADOPTION

Please take notice that on September 24, 2019, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2330 of the zoning ordinance to include recreational marihuana facilities within the current overlay district.

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

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

Published _____, 2019.

CITY OF MUSKEGON

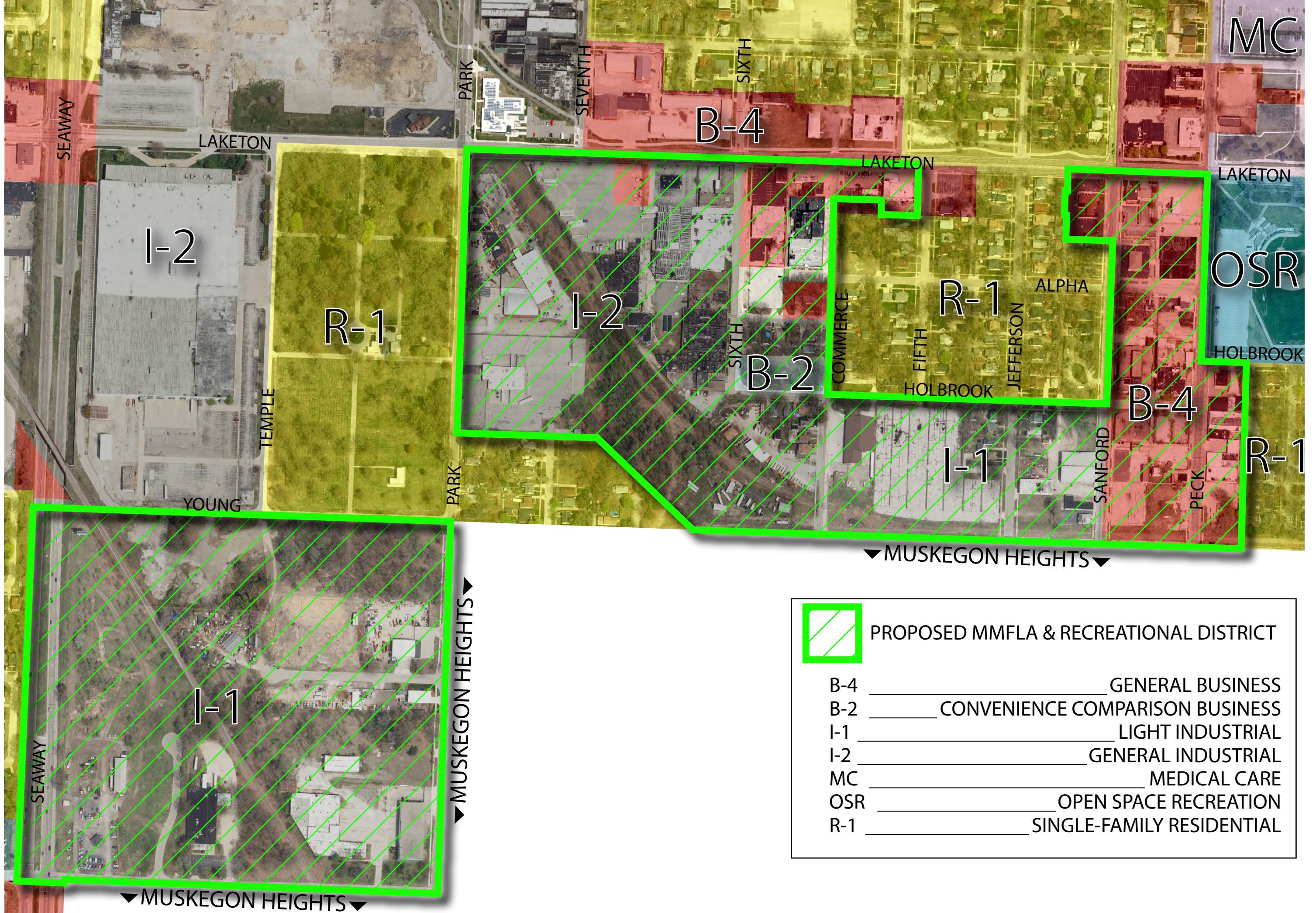
By _____

Ann Meisch, MMC

City Clerk

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

Account No. 101-80400-5354



 PROPOSED MMFLA & RECREATIONAL DISTRICT

B-4	GENERAL BUSINESS
B-2	CONVENIENCE COMPARISON BUSINESS
I-1	LIGHT INDUSTRIAL
I-2	GENERAL INDUSTRIAL
MC	MEDICAL CARE
OSR	OPEN SPACE RECREATION
R-1	SINGLE-FAMILY RESIDENTIAL