

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 27, 2022 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS, AWARDS, AND PRESENTATIONS:**
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Getty Street Study Engineering Agreement** Public Works
 - C. 30" Water Main Meter** Public Works/Water Filtration Plant
 - D. Interim City Manager Stipend** City Manager
- ☐ **PUBLIC HEARINGS:**
- ☐ **UNFINISHED BUSINESS:**
- ☐ **NEW BUSINESS:**
 - A. New City Manager Selection – Next Steps** City Clerk
- ☐ **ANY OTHER BUSINESS:**
- ☐ **PUBLIC COMMENT ON NON-AGENDA ITEMS:**
 - ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
 - ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
 - ▶ Submit the form to the City Clerk.
 - ▶ Be recognized by the Chair.
 - ▶ Step forward to the microphone.
 - ▶ State name and address.
 - ▶ Limit of 3 minutes to address the Commission.
 - ▶ (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)
- ☐ **CLOSED SESSION:**
- ☐ **ADJOURNMENT:**

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

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 27, 2022	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the August 23, 2022 Regular Meeting and the August 31, 2022 Special Commission 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

AUGUST 23, 2022 @ 5:30 P.M.

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

AGENDA

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, August 23, 2022, Reverend Eileen Stoffan, St. Paul's Episcopal Church, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

Present: Mayor Ken Johnson, Vice Mayor Willie German, Jr., Commissioners Teresa Emory, Rebecca St.Clair, and Eric Hood, Interim City Manager LeighAnn Mikesell, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioners Rachel Gorman and Michael Ramsey

PUBLIC COMMENT ON AGENDA ITEMS: Public comments were received.

2022-74 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the July 26, 2022 Regular Meeting.

STAFF RECOMMENDATION: To approve the minutes.

B. Alive on the Lakeshore Tax Appeal Legal Representation Finance

SUMMARY OF REQUEST: The City of Muskegon is seeking to reach an agreement with Foster Swift for a Tax Appeal regarding Alive on the Lakeshore.

Parmenter Law which normally represents the City of Muskegon has a conflict of interest because they also represent Alive on the Lakeshore. Therefore, the City of Muskegon seeking another Firm (Foster Swift) to represent the City for the Tax Appeal.

As part of this engagement, the City of Muskegon understands that the Firm also represents Muskegon County. If a circumstance arises in the future that presents a conflict of interest based on the Firm's representation of the City in this matter and its representation of the County in other matters, the City agrees to waive

any such conflict of interest so that the Firm is not precluded from representing the County in any matters.

AMOUNT REQUESTED: \$230/hour

STAFF RECOMMENDATION: Authorize the Finance Director to enter into an agreement with the Foster Swift for the Tax Appeal against Alive on the Lakeshore.

C. 1095 Third Street Purchase Agreement Economic Development

SUMMARY OF REQUEST: Staff have been working on acquisition terms for the 1095 Third Street site, and have worked with legal counsel to prepare the attached purchase and sale agreement.

We have had a positive working experience with Shaun Burket and Suburban Property. We are at a point where we have agreed on development components, timeline, and incentive vehicle (Brownfield TIF). The document before you tonight represents the terms of sale for the parcel and building. The developer proposes a \$100,000 payment at time of closing, with a \$10,000 refundable deposit during the due diligence period. During the 90-day due diligence period both parties mutually commit to finalizing a specific development agreement, which will lay out potential consequences to breach of timeline for the development.

AMOUNT REQUESTED: (\$100,000 gain)

FUND OR ACCOUNT: 404

STAFF RECOMMENDATION: Motion to approve the Purchase and Sale Agreement as presented and authorize the Mayor and Clerk to sign.

Motion by Vice Mayor German, second by Commissioner Emory, to accept the consent agenda as presented, minus item D.

ROLL VOTE: Ayes: Johnson, Hood, German, Emory, and St.Clair

Nays: None

MOTION PASSES

2022-75 REMOVED FROM CONSENT AGENDA:

D. STOP Violence Against Women Grant Public Safety

SUMMARY OF REQUEST: The Michigan Department of Health and Human Services (MDHHS) Division of Victim Services has approved a fourth year of grant funding in the amount of \$211,884 for two detectives to be assigned to a multi-jurisdictional violence against women task force. Public Safety seeks approval to accept the funds and sign the contract.

With STOP Violence Against Women grant funding from MDHHS, the Muskegon Police Department, Norton Shores Police Department, and Muskegon Prosecutor's Office established a Violence Against Women Task Force in October of 2020. Two detectives from Muskegon PD, two from Norton Shores PD, and two prosecutors make up the task force. The task force works collaboratively to investigate and support victims of domestic violence, sexual assault, and stalking cases from all Muskegon County jurisdictions.

MDHHS has offered each governmental unit a fourth year of funding from October 1 through September 30 with a required 25% match. Funding was approved for two detectives, grant administration, and victim support items. The total project cost for the City of Muskegon is \$282,512, where MDHHS will provide up to \$211,884. A match is only necessary on funds used. Full contract details, program requirements, and budgeted items are attached.

AMOUNT REQUESTED: \$211,884 with a 25% match requirement.

FUND OR ACCOUNT: 101-301-703-000630

STAFF RECOMMENDATION: To accept the 2023 Stop Violence Against Women Grant and authorize staff to sign the contract.

Motion by Commissioner St.Clair, second by Commissioner Emory, to accept the 2023 STOP Violence Against Women Grant and authorize staff to sign the contract.

ROLL VOTE: Ayes: Johnson, Hood, German, Emory, and St.Clair

Nays: None

MOTION PASSES

2022-76 NEW BUSINESS:

A. Amendment to the Zoning Ordinance – Minimum Housing Unit Sizes
Planning

Sent back to Planning Commission

B. Planned Unit Development at 2033 & 2044 Lakeshore Drive Planning

SUMMARY OF REQUEST: Request for final Planned Unit Development approval for a micro-lodging development at 2033 and 2043 Lakeshore Dr, by Tiny Diggs Muskegon LLC.

The development consists of 10 micro-lodging rental units at the corner of Lakeshore Drive and Moon Street. The units are 212 sq ft in size and will be placed 10 feet apart from each other. Parking will be located off-site behind Ghezzi's Market. The Planning Commission will hold a public hearing regarding the case on August 11. Staff has recommended the addition of five canopy trees to be placed in the terrace along Moon Street.

STAFF RECOMMENDATION: To adopt the resolution and approve the final PUD at 2033 and 2043 Lakeshore Dr with the addition of five canopy trees to be located in the terrace along Moon St.

Grant and authorize staff to sign the contract.

Motion by Commissioner Hood, second by Commissioner St.Clair, to adopt the resolution and approve the final PUD at 2033 and 2043 Lakeshore Drive with the addition of five canopy trees to be located in the terrace along Moon Street.

ROLL VOTE: Ayes: German, Emory, St.Clair, and Hood

Nays: Johnson

MOTION PASSES

ANY OTHER BUSINESS:

Interim City Manager, LeighAnn Mikesell, provided an update on the selection of the new Public Safety Director. Tim Kozal will be sworn in on Monday, August 29, 2022 at 9:00 a.m. in the Commission Chambers. He is coming from the City of Ludington. Captain Rush did a fantastic job of acting as interim Public Safety Director while the search was being conducted.

Mayor Johnson commented on the concerns that have come up over short term rentals and would be interested in exploring options to refine regulations as well as how to preserve housing stock for city residents.

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

ADJOURNMENT: The City Commission meeting adjourned at 7:38 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC - City Clerk

CITY OF MUSKEGON
SPECIAL CITY COMMISSION MEETING

August 31, 2022 @ 5:30 pm
Muskegon City Hall, 933 Terrace Street, Muskegon, MI 49440
In the Commission Chambers, Room 107

MINUTES

Present: Mayor Johnson, Commissioners German, Emory, St. Clair, and Hood.

Absent: Commissioners Gorman and Ramsey.

2022-77

Closed Session.

Motion by Commissioner Hood, seconded by Commissioner Emory to go into closed session to review the applications for City Manager.

Roll Call Vote:

Ayes: German, Emory, Hood, St. Clair, and Johnson.
Nays: None.

MOTION PASSES.

Open Session.

Motion by Vice Mayor German, seconded by Commissioner Hood to go into open session.

MOTION PASSES.

Candidates to Interview.

Motion by Commissioner St. Clair, seconded by Commissioner Emory to interview candidates 2, 3, 10, 11, 13, and 14. Alternate candidate 16 may be invited to interview if two candidates decline the interview.

Roll Call Vote:

Ayes: German, Emory, St. Clair, Johnson, and Hood.
Nays: None.

MOTION PASSES.

Travel Expenses.

Motion by Commissioner Emory, seconded by Vice Mayor German to pay for flights, hotel, and transit for two nights for any candidate needing to travel, to give \$100 in restaurant gift cards for all candidates to cover food expenses while they visit, and authorize the use of gift cards to pay for boxed lunches on Friday and the cost of Kuntry Cookin to provide appetizers for the meet and greet on Thursday evening.

Roll Call Vote:

**Ayes: Emory, St. Clair, Johnson, Hood, and German.
Nays: None.**

MOTION PASSES.

ADJOURN.

Motion by St. Clair, seconded by Commissioner Hood to adjourn the meeting at 7:45 pm.

MOTION PASSES.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 27, 2022	Title: Getty Traffic Study Engineering Agreement												
Submitted By: Dan VanderHeide	Department: Public Works												
Brief Summary: Staff is requesting authorization to enter into an agreement with the cities of Norton Shores and Muskegon Heights to share the cost of the Getty Street Traffic Study.													
Detailed Summary & Background: Conversion of four-lane roads, such as Getty Street, to three-lane roads has been proven to be safer and to provide better access for non-vehicular users with little or no impact to travel times when properly studied and executed. Staff feels that Getty Street could be a great candidate for this treatment, and has worked with Norton Shores and Muskegon Heights to solicit a study to determine if the project should move forward. Presented to you tonight is a three-party shared engineering services agreement with the cities of Norton Shores and Muskegon Heights. The agreement designates our staff as the lead contacts for the project, designates Muskegon as the lead agency for payment, and requires Norton Shores and Muskegon Heights to pay their portions to Muskegon based on the centerline miles of Getty Street in each community. The agreement has been reviewed by the City attorney, and has already been approved by the city commissions of Norton Shores and Muskegon Heights at prior meetings. Award to the consultant helping with the traffic study was approved at the August 9, 2022 Commission Meeting. The agreement presented tonight has a lower cost to the City than the original request, due to how the cost sharing is split among the three communities.													
Goal/Focus Area/Action Item Addressed: Goal 1 (Connection and Transportation Focus Areas) and Goal 2 (Neighborhood Business Focus)													
Amount Requested: N/A (Approved 8/9/22)	Amount Budgeted: \$50,000												
Fund(s) or Account(s): 202 (Major Streets)	Fund(s) or Account(s): 202 (Major Streets)												
Recommended Motion: Authorize staff to enter into and agreement with the cities of Norton Shores and Muskegon Heights to share the cost of the Getty Street Traffic Study.													
<table border="0"><tr><td>Approvals:</td><td>Immediate Division Head</td><td>☒</td><td>Guest(s) Invited / Presenting</td></tr><tr><td>Information Technology</td><td>Legal Review</td><td>☒</td><td>Yes ☐</td></tr><tr><td>Communication</td><td>Other Division Heads</td><td>☐</td><td>No ☒</td></tr></table>		Approvals:	Immediate Division Head	☒	Guest(s) Invited / Presenting	Information Technology	Legal Review	☒	Yes ☐	Communication	Other Division Heads	☐	No ☒
Approvals:	Immediate Division Head	☒	Guest(s) Invited / Presenting										
Information Technology	Legal Review	☒	Yes ☐										
Communication	Other Division Heads	☐	No ☒										
For City Clerk Use Only: Commission Action:													

COST SHARING AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 202__ by and between THE CITY OF MUSKEGON, a Michigan municipal corporation at 933 Terrace Street, Muskegon, Michigan 49440 ("Muskegon"), THE CITY OF MUSKEGON HEIGHTS, a Michigan municipal corporation at 2724 Peck Street, Muskegon Heights, Michigan 49444 ("Muskegon Heights"), and THE CITY OF NORTON SHORES, a Michigan municipal corporation at 4814 Henry Street, Norton Shores, Michigan 49441 ("Norton Shores") (collectively, "the Municipalities").

RECITALS

- A. The Municipalities require Traffic Engineering Services relating to a study of Getty Street from Seaway Drive (US-31BR) to Apple Avenue (M-46), various portions of which are under the jurisdiction of each of the Municipalities (the "Services").
- B. The Municipalities recognize the administrative and economic benefits of performing a single study over the entire corridor.
- C. Muskegon employs persons qualified to oversee the Services, and the Municipalities desire to enter into an agreement with Muskegon to contract for and oversee the Services on behalf of the Municipalities for the Getty Street study.

AGREEMENT

- I. Muskegon will contract for the Services. Muskegon is authorized to act on behalf of the Municipalities in regards to contracting, project management, financial oversight, and administration of the Services.
- II. This Agreement will commence on the date first stated above, and will continue through study finalization. Once commenced, this Agreement shall not be terminable without express written consent from all parties. In the event of any termination, Muskegon shall be paid up to the effective date of termination for services rendered.
- III. Invoices for the Services will be delivered by Muskegon to the Municipalities. The Municipalities agree to pay all amounts due within 45 days of the invoice date. The invoices will be allocated to each of the Municipalities based upon the Act 51 certified mileage of Getty Street in each of the Municipalities. The cost of the study is estimated at _____ dollars (\$ _____), however the total amount of the invoices shall be based on the actual cost of the Services. A detailed breakdown of the estimate cost of the Services is shown in Table A.

- IV. This Agreement shall not be deemed to be a third-party beneficiary contract or a contract for the benefit of any party other than the parties hereto. Muskegon shall not be responsible to any party other than the Municipalities for any acts, errors, mistakes, or omissions; and Muskegon shall have no liability or responsibility to the Municipalities for any acts, errors, mistakes, or omissions of others unless stated otherwise in a Request for Proposals (RFP).
- V. Muskegon will cause any contractors related to the Services to carry professional liability, automobile, general liability, workers compensation and other insurance as may be applicable in amounts common to the industry and in accordance with Muskegon's policies on such matters.
- VI. Final documents prepared in connection with the Services will be property of the Municipalities. At the conclusion of the project, Muskegon will furnish a reproducible set of documents and related data to the Municipalities, including an electronic copy of graphics prepared as a part of the Services.
- VII. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section of this Agreement.
- VIII. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Michigan.
- IX. The entire agreement between the parties is set forth in this Agreement. This Agreement shall not be altered or amended except by written agreement signed by all parties.

Table A

Municipality	Act 51 Certified Mileage	Percentage	Cost Share	Contingencies (10%)	Total Cost Share
Muskegon	1.519	45.2%	\$19,813	\$1,981	\$21,794
Muskegon Heights	0.733	21.8%	\$9,555	\$955	\$10,510
Norton Shores	1.108	33.0%	\$14,465	\$1,447	\$15,912
Total	3.360	100%	\$43,833	\$4,383	\$48,216

The remainder of this page is left intentionally blank.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed pursuant to the authority of the respective parties as of the date first stated above.

CITY OF MUSKEGON, a Michigan municipal corporation,

By: _____
(signature)

(printed name)

Its: _____
(title)

On: _____
(date)

CITY OF MUSKEGON HEIGHTS, a Michigan municipal corporation,

By: _____
(signature)

(printed name)

Its: _____
(title)

On: _____
(date)

CITY OF NORTON SHORES, a Michigan municipal corporation,

By: _____
(signature)

(printed name)

Its: _____
(title)

On: _____
(date)

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: September 27, 2022		Title: 30" Water Main Meter	
Submitted By: Joe Buthker		Department: Public Works – Water Filtration Plant	
Brief Summary: A water meter is needed on the new 30" water main near the Water Filtration Plant. Prein & Newhof have provided an agreement for engineering services for the design, bidding, and construction phases of this project.			
Detailed Summary & Background: A 30" water main was recently constructed from the Water Filtration Plant to the Muskegon Channel. While the primary purpose of this water main was to provide a second connection to the Muskegon County Northside water system, it also serves the City of Muskegon's water system. An existing water meter near the channel measures all water flow into the Muskegon County Northside water system, but it does not capture any water used between the channel and the Water Filtration Plant. Installing a water meter near the Water Filtration Plant will measure all the water flowing through this main, both to the Muskegon County Northside system and to the City. Metering this water as it leaves the Water Filtration Plant is critical to overseeing water plant operations, managing the water fund, and ensuring regulatory compliance. As part of the Water Filtration Plant's Reliability Study, Prein & Newhof investigated two options for metering this water. Because of Prein & Newhof's familiarity with this project from their work developing these two options, we did not solicit proposals from other firms. The proposal includes engineering services during the design, bidding, and construction phases of the water meter project. The construction portion of the project will be posted for bids and presented to the Commission for approval at a later date. This project is a budgeted capital improvement project for FY 2022-23.			
Goal/Focus Area/Action Item Addressed: N/A			
Amount Requested: \$41,000.00		Amount Budgeted: \$150,000.00	
Fund(s) or Account(s): 591-901-801-092034		Fund(s) or Account(s): 591-901-801-092034	
Recommended Motion: Authorize staff to enter into an agreement with Prein & Newhof for a not to exceed cost of \$41,000.00 for engineering services related to the installation of a water meter near the Water Filtration Plant.			

<i>Approvals: Get approval from division head at a minimum prior to sending to the Clerk.</i>		Guest(s) Invited / Presenting	
Immediate Division Head	☐	Information Technology	☐
Other Division Heads	☐	Communication	☐
Legal Review	☐		
For City Clerk Use Only:			
Commission Action:			

August 18, 2022

Mr. Joe Buthker
City of Muskegon
Water Filtration Plant
1900 Beach Street
Muskegon, MI 49441

Re: Proposal for Professional Engineering Services for a Flow Meter at the WFP

Dear Joe:

We are submitting this proposal to provide professional engineering services for the design of the installation of a meter to quantify flow of treated water serving City of Muskegon water customers via the Muskegon County transmission main in Beach Street. We understand the City wishes to pursue use of a single meter installed in a chamber on the Muskegon County main as recommended in our recent evaluation of options. We propose the following scope of services for the design and construction phases of the project:

Design and Bidding Phase

- Coordinate with the Muskegon County Department of Public Works regarding design of a meter in the County Transmission Main
- Complete topographic survey of work area
- Prepare plan and profile drawings for construction of a meter chamber containing a new flow meter including piping work, electrical, and integration of the flow signal with existing controls
- Prepare bid documents, technical specifications, and Act 399 Permit Application
- Attend one design review meeting
- Prepare opinion of probable cost based on final design
- Assist City with advertising for bids, providing responses to questions, preparing addendums
- Review bids and prepare bid tabulation and provide recommendation for award
- Prepare Notice of Award and Notice to Proceed
- Assist City with preparation of final contracts for signing by Contractor

Construction Phase

- Schedule and attend preconstruction meeting and prepare minutes
- Track and review submittals
- Provide construction staking for the meter chamber location
- Provide construction observation during installation of the meter chamber and meter (we assume 30 hours)
- Provide 8 hours on site during startup/calibration/check out of operation of the new meter.

Mr. Joe Buthker
August 18, 2022
Page 2

- We are not anticipating the need for a monthly progress meeting as this work should be complete in 2 to 4 weeks
- Respond to RFIs, prepare payment applications, and change orders; and
- Prepare punch lists, record plans, and close out documents

Fee

Based on the scope of work described above, we propose to complete the work for a not to exceed cost of \$41,000 based on the services described. An approximate breakdown is as follows:

Design Engineering and Bidding Assistance Services - \$24,500
Construction Engineering Services - \$16,500

A more detailed worksheet showing our estimated time and level of effort is attached.

Thank you for the opportunity to provide this proposal. Please contact us if you have any questions.

Sincerely,

Prein&Newhof



Barbara E. Marczak, P.E.



Peter W. Brink, P.E.

Enclosures: Estimated work effort/fee, Professional Services Agreement

Professional Hours Worksheet

City of Muskegon -WFP Meter

Design	Staff Member	Sen. PM	Sen. PM	Eng.	CADD/GIS	Survey	Sub-contracts	Mileage	Total Cost
		Marczak	Brink	Staff	Staff	Staff			
Topographic survey									\$3,500
Review City and County Plans			2	4					\$800
Plan and Profile (1 P&N Sheet, 1 CAE Sheet)			3	10	32		\$7,000.00		\$14,100
Specifications			5	20					\$3,100
EGLE Act 399 Permit Application				3					\$300
Joint Permit App									\$0
Design Coordination Meeting			2	2				20	\$600
Cost Estimate				4					\$500
QA/QC		4							\$700
Bidding - Answer Questions, Review Bids			3	4					\$900
Design Subtotals		4	13	43	32	0	\$7,000	20	\$24,500

Construction Engineering Services									
Preconstruction Meeting and Minutes			2	3				20	\$700
Construction Staking						10		80	\$2,100
Project Administration/Submittals			5	10					\$2,000
Respond to RFIs				2					\$200
Change Orders (1)				2					\$200
Pay Apps (1)				2					\$200
Progress Meetings (Not anticipated)				2					\$200
Construction Observation			5	25			\$3,500.00	80	\$7,500
Meter Startup				5				20	\$1,400
Punch List Visits (1)				2				20	\$200
Record Plans/Closeout	2		1	3	6				\$1,800
Construction Engineering Subtotals	2	18	56	6	10		\$3,500	220	\$16,500
Project Grand Total	6	31	99	38	10		\$10,500	240	\$41,000

Project No.

Professional Services Agreement

This Professional Services Agreement is made this 18th day of August, 2022 ("Agreement") by and between Prein & Newhof, Inc. ("P&N"), of 3355 Evergreen Drive, NE, Grand Rapids, MI 494525, and City of Muskegon ("Client"), of 933 Terrace Street, Muskegon, MI 49443.

WHEREAS Client intends to:

Complete water system improvements to meter flow to City customers through a Muskegon County transmissison main

NOW THEREFORE, for and in consideration of the terms and conditions contained herein, the parties agree as follows:

ARTICLE 1 – DESIGNATED REPRESENTATIVES

Client and P&N each designate the following individuals as their representatives with respect to the Project.

For P&N

Name: Peter W. Brink, P.E.
Title: Senior Project Manager
Phone Number: 231-798-0101
Facsimile Number: 231-798-0337
E-Mail Address: pbrink@preinnewhof.com

For Client

Name: Leo Evans, P.E.
Title: Director of Public Works
Phone Number: 231-724-6920
Facsimile Number: 231-727-6904
E-Mail Address: leo.evans@shorelinecity.com

ARTICLE 2 – GENERAL CONDITIONS

This Agreement consists of this Professional Services Agreement and the following documents which by this reference are incorporated into and made a part of this Agreement.

- ☐ P&N Standard Terms and Conditions for Professional Services
- ☒ P&N Proposal dated, August 18, 2022
- ☒ P&N Standard Rate Schedule
- ☐ P&N Supplemental Terms and Conditions
- ☒ Other: Modified (8/16/22) P&N Standard Terms and Conditions for Professional Services

ARTICLE 3 – ENGINEERING SERVICES PROVIDED UNDER THIS AGREEMENT:

Client hereby requests, and P&N hereby agrees to provide, the following services:

- ☒ P&N Scope of Services per Proposal dated, August 18, 2022
- ☐ Scope of Services defined as follows:

ARTICLE 4 – COMPENSATION:

- ☒ Lump Sum for Services Described in Article 3 above - \$41,000.00.

Additional services to be billed per P&N's Standard Rate Schedule in effect on the date the additional services are performed.

- ☐ Hourly Billing Rates plus Reimbursable Expenses per P&N's Standard Rate Schedule in effect on the date services are performed.
- ☐ Other:

ARTICLE 5 – ADDITIONAL TERMS (If any)

NONE (pwb)

This Agreement constitutes the entire Agreement between P&N and Client and supersedes all prior written or oral understandings. This Agreement may not be altered, modified, or amended, except in writing properly executed by authorized representatives of P&N and Client.

Accepted for:

Prein&Newhof, Inc.

By: Barbara E. Marczyk

Printed Name: Barbara Marczyk

Title: Team Leader

Date: August 18, 2022

Accepted for:

City of Muskegon

By: _____

Printed Name: _____

Title: _____

Date: _____

MODIFIED 8/16/22
Standard Terms & Conditions

- A. General** - As used in this Prein&Newhof Standard Terms and Conditions for Professional Services (hereinafter "Terms and Conditions"), unless the context otherwise indicates: the term "Agreement" means the Professional Services Agreement inclusive of all documents incorporated by reference including but not limited to this P&N Standard Terms and Conditions for Professional Services; the term "Engineer" refers to Prein & Newhof, Inc.; and the term "Client" refers to the other party to the Professional Services Agreement.

These Terms and Conditions shall be governed in all respects by the laws of the United States of America and by the laws of the State of Michigan.

- B. Standard of Care** - The standard of care for all professional and related services performed or furnished by Engineer under the Agreement will be the care and skill ordinarily used by members of Engineer's profession of ordinary learning, judgment or skill practicing under the same or similar circumstances in the same or similar community, at the time the services are provided.
- C. Disclaimer of Warranties** - Engineer makes no warranties, expressed or implied, under the Agreement or otherwise.
- D. Construction/Field Observation** - If Client elects to have Engineer provide construction/field observation, client understands that construction/field observation is conducted to reduce, not eliminate the risk of problems arising during construction, and that provision of the service does not create a warranty or guarantee of any type. In all cases, the contractors, subcontractors, and/or any other persons performing any of the construction work, shall retain responsibility for the quality and completeness of the construction work and for adhering to the plans, specifications and other contract documents.
- E. Construction Means and Methods** - Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for any safety precautions and programs in connection with the construction work, for the acts or omissions of the Contractor, Subcontractors, or any other persons performing any of the construction work, or for the failure of any of them to carry out the construction work in accordance with the plans, specifications or other contract documents.
- F. Opinions of Probable Costs** - Client acknowledges that Engineer has no control over market or contracting conditions and that Engineer's opinions of costs are based on experience, judgment, and information available at a specific period of time. Client agrees that Engineer makes no guarantees or warranties, express or implied, that costs will not vary from such opinions.
- G. Client Responsibilities**
1. Client shall provide all criteria, Client Standards, and full information as to the requirements necessary for Engineer to provide the professional services. Client shall designate in writing a person with authority to act on Client's behalf on all matters related to the Engineer's services. Client shall assume all responsibility for interpretation of contract documents and construction observation/field observation during times when Engineer has not been contracted to provide such services and shall waive any and all claims against Engineer that may be connected thereto.
 2. In the event the project site is not owned by the Client, the Client must obtain all necessary permission for Engineer to enter and conduct investigations on the project site. It is assumed that the Client possesses all necessary permits and licenses required for conducting the scope of services. Access negotiations may be performed at additional costs. Engineer will take reasonable precaution to minimize damage to land and structures with field equipment. Client assumes responsibility for all costs associated with protection and restoration of project site to conditions existing prior to Engineer's performance of services.
 3. The Client, on behalf of all owners of the subject project site, hereby grants permission to the Engineer to utilize a small unmanned aerial system (sUAS) for purposes of aerial mapping data acquisition. The Client is responsible to provide required notifications to the property owners of the subject project site and affected properties where the sUAS services will be performed. The Engineer will operate the sUAS in accordance with applicable State and Federal Laws.
- H. Hazardous or Contaminated Materials/Conditions**
1. Client will advise Engineer, in writing and prior to the commencement of its services, of all known or suspected Hazardous or Contaminated Materials/Conditions present at the site.
 2. Engineer and Client agree that the discovery of unknown or unconfirmed Hazardous or Contaminated Materials/Conditions constitutes a changed condition that may require Engineer to renegotiate the scope of or terminate its services. Engineer and Client also agree that the discovery of said Materials/Conditions may make it necessary for Engineer to take immediate measures to protect health, safety, and welfare of those performing Engineer's services. Client agrees to compensate Engineer for any costs incident to the discovery of said Materials/Conditions.
 3. Client acknowledges that Engineer cannot guarantee that contaminants do not exist at a project site. Similarly, a site

which is in fact unaffected by contaminants at the time of Engineer's surface or subsurface exploration may later, due to natural phenomena or human intervention, become contaminated. The Client waives any claim against Engineer, and agrees to defend, indemnify and hold Engineer harmless from any claims or liability for injury or loss in the event that Engineer does not detect the presence of contaminants through techniques commonly employed.

4. The Client recognizes that although Engineer is required by the nature of the services to have an understanding of the laws pertaining to environmental issues, Engineer cannot offer legal advice to the Client. Engineer urges that the Client seek legal assistance from a qualified attorney when such assistance is required. Furthermore, the Client is cautioned to not construe or assume that any representations made by Engineer in written or conversational settings constitute a legal representation of environmental law or practice.
5. Unless otherwise agreed to in writing, the scope of services does not include the analysis, characterization or disposal of wastes generated during investigation procedures. Should such wastes be generated during this investigation, the Client will contract directly with a qualified waste hauler and disposal facility.

I. Underground Utilities – To the extent that the Engineer, in performing its services, may impact underground utilities, Engineer shall make a reasonable effort to contact the owners of identified underground utilities that may be affected by the services for which Engineer has been contracted, including contacting the appropriate underground utility locating entities and reviewing utility drawings provided by others. Engineer will take reasonable precautions to avoid damage or injury to **underground** utilities and other underground structures. Client agrees to hold Engineer harmless for any damages to below ground utilities and structures not brought to Engineers attention and/or accurately shown or described on documents provided to Engineer.

J. Insurance

1. Engineer will maintain insurance for professional liability, general liability, worker's compensation, auto liability, and property damage in the amounts deemed appropriate by Engineer. Client will maintain insurance for general liability, worker's compensation, auto liability, and property damage in the amounts deemed appropriate by Client. Upon request, Client and Engineer shall each deliver certificates of insurance to the other evidencing their coverages.
2. Client shall require Contractors to purchase and maintain commercial general liability insurance and other insurance as specified in project contract documents. Client shall cause Engineer, Engineer's consultants, employees, and agents to be listed as additional insureds with respect to any Client or Contractor insurances related to projects for which Engineer provides services. Client agrees and must have Contractors agree to have their insurers endorse these policies to reflect that, in the event of payment of any loss or damages, subrogation rights under these Terms and Conditions are hereby waived by the insurer with respect to claims against Engineer.

K. Limitation of Liability - The total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants, whether jointly, severally or individually, to Client and anyone claiming by, through, or under Client, for any and all injuries, losses, damages and expenses, whatsoever, arising out of, resulting from, or in any way related to the Project or the Agreement, including but not limited to the performance of services under the Agreement, from any cause or causes whatsoever, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, expressed or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, consultants, or any of them, shall not exceed the amount of the compensation paid to Engineer under this Agreement, ~~or the sum of fifty thousand dollars and no cents (\$50,000.00), whichever is less.~~ Recoverable damages shall be limited to those that are direct damages. Engineer shall not be responsible for or held liable for special, indirect or consequential losses or damages, including but not limited to loss of use of equipment or facility, and loss of profits or revenue.

Client acknowledges that Engineer is a corporation and agrees that any claim made by Client arising out of any act or omission of any director, officer, or employee of Engineer, in the execution or performance of the Agreement, shall be made against Engineer and not against such director, officer, or employee.

L. Documents and Data

1. All documents prepared or furnished by Engineer under the Agreement are Engineer's instruments of service, and are and shall remain the property of Engineer.
2. Hard copies of any documents provided by Engineer shall control over documents furnished in electronic format. Client recognizes that data provided in electronic format can be corrupted or modified by the Client or others, unintentionally or otherwise. Consequently, the use of any data, conclusions or information obtained or derived from electronic media provided by Engineer will be at the Client's sole risk and without any liability, risk or legal exposure to Engineer, its employees, officers or consultants.
3. Any extrapolations, conclusions or assumptions derived by the Client or others from the data provided to the Client, either in hard copy or electronic format, will be at the Client's sole risk and full legal responsibility.

- M. Differing Site Conditions** - Client recognizes that actual site conditions may vary from the assumed site conditions or test locations used by Engineer as the basis of its design. Consequently, Engineer does not guarantee or warrant that actual site conditions will not vary from those used as the basis of Engineer's design, interpretations and recommendations. Engineer is not responsible for any costs or delays attributable to differing site conditions. .
- N. Terms of Payment** - Unless alternate terms are included in the Agreement, Client will be invoiced on a monthly basis until the completion of the **Project**. All monthly invoices are payable within 30 days of the date of the invoice. Should full payment of any invoice not be received within 30 days, the amount due shall bear a service charge of 1.5 percent per month or 18 percent per year plus the cost of collection, including reasonable attorney's fees. If Client has any objections to any invoice submitted by Engineer, Client must so advise Engineer in writing within fourteen (14) days of receipt of the invoice. Unless otherwise agreed, Engineer shall invoice Client based on hourly billing rates and direct costs current at the time of service performance. Outside costs such as, but not limited to, equipment, meals, lodging, fees, and subconsultants shall be actual costs plus 10 percent. In addition to any other remedies Engineer may have, Engineer shall have the absolute right to cease performing any services in the event payment has not been made on a current basis.
- O. Termination** - Either party may terminate services, either in part or in whole, by providing 10 calendar days written notice thereof to the other party. In such an event, Client shall pay Engineer for all services performed prior to receipt of such notice of **termination**, including reimbursable expenses, and for any shut-down costs incurred. Shut-down costs may, at Engineer's discretion, include expenses incurred for completion of analysis and records necessary to document Engineer's files and to protect its professional reputation.
- P. Severability and Waiver of Provisions** - Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and P&N, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable **provision** that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of the Agreement.
- Q. Dispute Resolution** - If a dispute arises between the parties relating to the Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies:
1. Prior to commencing a lawsuit, the parties must attempt mediation to resolve any dispute. The parties will jointly appoint a mutually acceptable person not affiliated with either of the parties to act as mediator. If the parties are unable to agree on the mediator within twenty (20) calendar days, they shall seek assistance in such regard from the Circuit Court of the State and County wherein the Project is located, who shall appoint a mediator. Each party shall be responsible for paying all costs and expenses incurred by it, but shall split equally the fees and expenses of the mediator. The mediation shall proceed in accordance with the procedures established by the mediator.
 2. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within thirty (30) calendar days, then, upon seven (7) calendar days' written notice to the other party, either party may pursue any other available remedy.
 3. In the event of any litigation arising from the Agreement, including without limitation any action to enforce or interpret any terms or conditions or performance of services under the Agreement, Engineer and Client agree that such action will be brought in the District or Circuit Court for the County of Kent, State of Michigan (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Western District of Michigan), and the parties hereby submit to the exclusive jurisdiction of said court.
- R. Force Majeure** - Engineer shall not be liable for any loss or damage due to failure or delay in rendering any services called for under the Agreement resulting from any cause beyond Engineer's reasonable control.
- S. Assignment** - Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.
- T. Modification** - The Agreement may not be modified except in writing signed by the party against whom a modification is sought to be enforced.
- U. Survival** - All express representations, indemnifications, or limitations of liability included in the Agreement shall survive its completion or termination for any reason.
- V. Third-Party Beneficiary** - Client and Engineer agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by a third party.
- W. Fee Escalation** - Proposed fees include a three percent (3%) per year cost of living adjustment. Should CPI increase by more than 3% in a year, Engineer reserves the right to adjust fees at the beginning of the following year by the amount of the prior year CPI increase.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 27, 2022	Title: Interim City Manager Stipend
Submitted By: LeighAnn Mikesell	Department: City Manager
Brief Summary: Extend stipend paid for the additional duties being performed in the Interim City Manager role.	
Detailed Summary: The \$450 weekly salary stipend is set to expire September 30, 2022. It is being proposed to extend the stipend for a 1 month time period, ending October 29, 2022 to allow time for the new City Manager to get settled into the position with the assistance of the Interim Manager. If the Interim Manager is selected, the stipend will cease once a contract is negotiated and accepted by the City Commission.	
Amount Requested: \$1,800	Amount Budgeted: Included in salary line
Fund(s) or Account(s): 101-10172-5100	Fund(s) or Account(s): 101-10172-5100
Recommended Motion: To approve the weekly stipend as presented.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: September 27, 2022		Title: New City Manager Selection – Next Steps	
Submitted By: Ann Marie Meisch, City Clerk		Department: City Clerk	
Brief Summary: The City Commission has carried out several steps of the hiring process for a new city manager and has narrowed the candidate field to two remaining candidates. The City Commission will discuss and decide what the next steps are in the process. The City Commission will also select a meeting date and time to continue the process.			
Detailed Summary & Background:			
Goal/Focus Area/Action Item Addressed:			
Amount Requested:		Amount Budgeted:	
Fund(s) or Account(s):		Fund(s) or Account(s):	
Recommended Motion: TBD			
Approvals: <i>Get approval from division head at a minimum prior to sending to the Clerk.</i>		Guest(s) Invited / Presenting	
Immediate Division Head	☐	Information Technology	☐
Other Division Heads	☐	Communication	☐
Legal Review	☐		
Yes		☐	
No		☐	
For City Clerk Use Only:			
Commission Action:			