

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 24, 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. Financial Policy Update City Treasurer
 - C. Equipment Replacement DPW/Equipment
 - D. Development and Reimbursement Agreement, Midtown/Nelson Brownfield Economic Development
 - E. Thermal Imaging Cameras (TIC) Public Safety/Fire Department
 - F. Melching – Change Order #005 Public Works
 - G. Water Filtration Plant – CE Contract Public Works
 - H. Establish Policy and Application for Block Parties Planning
 - I. Rezoning of 1713 7th Street Planning
 - J. Community Relations Committee Recommendations Clerk
- ☐ **PUBLIC HEARINGS:**
 - A. CAPER 2018 Community & Neighborhood Services
- ☐ **UNFINISHED BUSINESS:**
- ☐ **NEW BUSINESS:**

- A. Royal Glen Partnership City Manager
- B. Construction Agreement – Clark City Manager
- C. DDA On-Premise Liquor License for the LC Walker Arena Planning
- D. Recreational Marihuana Regulatory Ordinance Planning
- E. Amendment to the Medical Marihuana Facilities Overlay District to also allow Recreational Marihuana facilities Planning

☐ **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: September 19, 2019

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. Approval of an update to our financial policy related to poverty exemptions for qualified property tax payers. This update is simply bringing our city into compliance with rules/regulations related to the poverty exemption program.
 - c. Approval to purchase a replacement backhoe in the equipment division.
 - d. Approval of the development and reimbursement agreement for the Midtown Square 2 project. This is the part of the Brownfield Plan that will ensure the city is made whole on its investment.
 - e. Approval of the purchase of new thermal imaging cameras for the fire department.
 - f. Approval of a change order to the prison demolition contract to allow the city to access crushed concrete and crushed asphalt on the site rather than have it hauled away. The new materials would be used at various city projects; some may be kept on site for redevelopment purposes.
 - g. Approval of a contract with Consumers Energy related to energy usage during peak times at the water filtration plant. The agreement should result in significant cost savings for the plant.
 - h. Approval of the new block party policy as presented at the work session earlier this month.
 - i. Approval of the rezoning of 1713 7th Street to accommodate redevelopment of the site. The Planning Commission unanimously recommended the change.
 - j. Approval of CRC recommendations to appoint residents to various boards and commissions.
2. Public Hearings
 - a. We are seeking input on the 2018 CAPER. This is an annual document prepared by CNS related to the department's activities that are HUD funded.

3. New Business

- a. Staff is seeking permission to pursue a PILOT amendment for Royale Glen Apartments. The complex is located adjacent to Campbell Field. As part of the amendment, we would provide for a 5-year extension and a reduction from 5% PILOT to a 1% city service fee and a 1% PILOT (2% total). The changes will create new capital for the owners to allow for the investment of approximately \$600,000 in facility upgrades and an additional \$156,000 in contributions to improvements to Campbell Field. Staff has some ideas for Campbell Field that would include removal of the underutilized ball fields and the replacement of the playground. We also would recommend installing a significant number of trees to create a forested-look for the park. The park would function as a gathering space for neighborhood and family events. The one remaining field could be converted to accommodate softball, as well. Staff believes that the current softball team that uses the field can be accommodated at other fields in the city. We will spend time this fall/winter seeking neighborhood input as well as gathering costs.
- b. We are seeking permission to award the construction contract for the convention center to Clark Construction. The construction budget came in at the planned \$17.2 Million. The total project cost would be approximately \$19.4 Million. Jeff Salowitz from Construction Simplified will be in attendance to answer any questions.
- c. We are seeking approval of a DDA liquor license for the LC walker Arena. It was recently brought to our attention from the LCC that the city should have this form of license rather than an event center license. The new license will provide more flexibility to have daily activities in the arena, including bars/restaurants and convention center related activities.
- d. Approval of the recreational marihuana regulatory ordinance. This ordinance is necessary if the city does not opt out of recreational use. Staff is recommending that we not opt out. Further, as you will see below, we are recommending that the current medical district be adjusted to allow for recreational businesses in the same geographical footprint.
- e. Approval of an amendment to the Medical Marihuana Facilities Overlay District to allow for recreational facilities as well. This was approved at the Planning Commission level with one dissenting vote.

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

Frank



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 9/24/19	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the September 9, 2019 Worksession meeting and the September 10, 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 WORKSESSION

Monday, September 9, 2019
5:30 p.m.
City Commission Chambers

MINUTES

Present: Mayor Gawron, Commissioners Warren, Turnquist, Hood, Johnson, German, and Rinsema-Sybenga.

Absent: None.

PILOT - Samaritas - Planning Department

Samaritas is proposing an affordable housing development at 4 W. Webster Avenue and is requesting a Payment in Lieu of Taxes for the project. The development will include 53 residential for seniors and a 900 square foot commercial space on their first floor. A service charge of 4% will be imposed, as well as a municipal services fee of 2%.

Income targeting is based on 10 units at 30% AMI (Area Median Income); 9 units at 40% AMI; 1 unit at 50% AMI, 17 units at 60% AMI; and 16 units at 80% AMI. The project will have eight project-based vouchers for residents age 55 and over.

James Gilbert of Samaritas attended the Work Session meeting and presented a power point presentation.

The City Commission will consider this request at their September 10, 2019 Commission Meeting.

AmeriBank RFP Recommendation - Economic Development

Staff has reviewed proposals from developers for 880 First and have selected a preferred developer in 880 First Street, LLC, a partnership of Ferguson Development and Brianna Scott.

Brianna Scott and Joel Ferguson along with the project manager and other team members were present to answer questions of the Commission.

The City Commission will consider this request at their September 10, 2019 Commission Meeting.

Establish Policy, Application, and Fees for Block Parties - Planning

Staff is seeking to establish a policy, application, and fees to allow for block parties, closing city streets, to encourage neighborhood cohesion while placing reasonable restrictions to ensure safety and minimize risk for complaints.

Staff recommends establishing a block party policy, block party application, and associated fees. A \$50 application fee is being recommended. A \$100 cleaning fee will be charged to the applicant if city property is not returned to its original condition and/or trash is left on city property.

City Commissioners asked question of LeighAnn Mikesell of Planning. Commissioner Warren would like to see the proposed ordinance to be modified to include October 31st. Several other changes were suggested. Several Commissioners suggested that staff move slowly with the proposed policy.

Amendment to Vacant Building Ordinance, Modify Fees - Planning

Amend Section 10-107 of the City Code of Ordinances to require seasonal homes to be registered with the Public Safety Division, allow additional circumstances for waiving vacant building fees, and eliminate additional fees being applied when registration fees are not paid. Staff is also seeking approval of modification to Vacant Building Registration Fees for buildings zoned for Residential use and for buildings zoned for Commercial or Industrial Use.

The request is to amend Section 10-107 of the City Code of Ordinances to modify which buildings must be registered and the process and circumstances for waiving fees. The amendment would require seasonal homes to be registered with the Public Safety Division, allow additional circumstances for waiving vacant building fees, and eliminate additional fees being applied when registration fees are not paid. Staff is also seeking approval of modification to Vacant Building Registration Fees for building zone for Residential use and for buildings zoned for Commercial or Industrial Use. No fees will be charged until the building has been vacant for one year. The fee for residential use is \$100 per year and Commercial or Industrial Use for \$500 per year.

The City Commission will consider this request at their September 10, 2019 City Commission Meeting.

Beach Street 2020 Construction - DPW

DPW Director Leo Evans presented an overview of the work planned for Beach Street during the 2020 construction season with emphasis on the proposed operational changes and timing.

Ordinance Amendment to Prohibit Smoking at All Parks & Downtown Business District - DPW

A first draft of a potential ordinance revision to ban smoking at all public parks, beaches, trails, and potentially on streets in the core downtown area was presented. Restrictions include bike paths, trails and pathways, or any area used for a community event within the City boundaries. The proposed ordinance includes banning smoking in the core downtown areas bounded by Shoreline Drive heading easterly from Seventh Street to Spring Street, heading southerly on Spring Street from Shoreline Drive to Apple Avenue, heading westerly on Apple Avenue from Spring Street to Muskegon Avenue, heading westerly on Muskegon Avenue from Apple Avenue to Ninth Street, and heading northerly on Ninth Street to Western Avenue, heading westerly on Western Avenue from Ninth Street, heading northerly on Seventh Street from Western Avenue to Shoreline Drive; and on Third Street from Merrill Avenue to Muskegon Avenue.

The majority of the Commission indicated they were against banning smoking downtown. The ordinance will be changed based on the conversations and presented at a later date.

Signal Warrant Analysis - DPW

Staff is reporting they would like to remove three traffic signals under the City's jurisdiction. They are located at Sherman & Wickham, Webster & Pine, and Wood & Irwin.

This item will be placed on the September 10, 2019 City Commission Meeting for consideration by the City Commission.

Update on Convention Center

Frank Peterson gave an update on the funding for the Convention Center. Many contracts for work have been issued.

Adjourned at 8:30 pm.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 10, 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 10, 2019, Deacon William Cook, St. Mary's of the Immaculate Conception, 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.

HONORS AND AWARDS:

A. Certificate of Recognition for John and Angie King

Commissioner Willie German, Jr. presented John and Angie King with a Certificate of Recognition, on behalf of the City Commission, in recognition of the years of commitment to the youth in the community relative to the Port City Football Program.

PUBLIC COMMENT ON AGENDA ITEMS: Public comments were received.

2019-71 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the August 27, 2019 Regular Meeting.

STAFF RECOMMENDATION: Approval of the minutes.

B. MUPD Radar Message Trailer Public Safety/MUPD

SUMMARY OF REQUEST: Seeking City Commission authorization for the purchase of a Speed Alert Radar Message Trailer to provide drivers with speed feedback,

messages specific to vehicle speeds, or dedicated messages. This is a versatile tool for both traffic calming and messaging.

STAFF RECOMMENDATION: To approve the purchase of a Speed Alert Radar Message Trailer from All Traffic Solutions for \$15,985.00.

C. Increase in General Fund Transfer to LC Walker Arena Fund and Farmers Market/Kitchen 242 Fund Finance

SUMMARY OF REQUEST: The LC Walker Fund and the Farmers Market/Kitchen 242 Fund required a larger transfer from the General Fund than what was budgeted to prevent a deficit. Increases are needed of \$50,000 and \$15,000 for LC Walker Arena Fund and Farmers Market/Kitchen 242 Fund respectively.

Based on the financial results for the fiscal year ended June 30, 2019, the LC Walker Arena and Farmers Market/Kitchen 242 Fund required a larger transfer from the General Fund than what was budgeted for in the 3rd quarter reforecast, to prevent a fund deficit. The LC Walker Fund needs to be increased from \$425,000 to \$475,000 and the Farmers Market/Kitchen 242 Fund needs to be increased from \$20,000 to \$35,000.

STAFF RECOMMENDATION: To approve the increase to the General Fund transfers for the LC Walker Arena to \$475,000 and Farmers Market/Kitchen 242 fund to \$35,000.

D. Updates to MERS Defined Contribution Plan Adoption Agreements Finance

SUMMARY OF REQUEST: MERS of Michigan has requested we update our Defined Contribution Plan Adoption Agreements to ensure MERS has the correct information regarding what is included and excluded for MERS wage calculations.

After an audit conducted by MERS of our payroll system it was discovered that MERS needed many updates to our Plan Adoption Agreements for our Defined Contribution groups.

STAFF RECOMMENDATION: To approve the updates to the MERS Defined Contribution Plan Adoption Agreements.

E. Update to MERS Defined Benefit Plan Adoption Agreement – Command Finance

SUMMARY OF REQUEST: Per the 2019-2022 Police Command contract, overtime pay is included in calculating MERS wages beginning January 1, 2019, this change requires an update to our MERS Plan Agreement.

After an audit was conducted by MERS of our payrolls system it was discovered that we need to update many of our Plan Agreements for changes made per union agreements, or for policy/procedures not communicated to MERS in the past. The current Police Command contract calls for overtime wages to be

included in the MERS wage calculation beginning January 1, 2019. This change requires an update to the Plan Adoption Agreement.

STAFF RECOMMENDATION: To approve the update to the MERS Plan Adoption Agreement for Police Command to include overtime pay in MERS wage calculation.

F. MDNR Urban Forestry Grant DPW

SUMMARY OF REQUEST: Staff is seeking approval to apply for an Urban Forestry Grant from the Michigan Department of Natural Resources. If awarded, the grant would be used to complete an inventory of the existing street and park trees within the City of Muskegon, to prepare an urban tree canopy analysis, and to develop a long-range plan for the management and development of the urban forest within the City of Muskegon.

STAFF RECOMMENDATION: Authorize staff to apply for an MDNR Urban Forestry Grant and commit to providing matching funds for the grant application of up to \$20,000.

G. Prein & Newhof Lakeshore Drive Amendment #1 DPW

SUMMARY OF REQUEST: A number of items were added to the Lakeshore Drive Project that were not included in the original scope of work, including replacement of two water mains and additions to streetscaping, causing an increase in engineering services.

During design of the project at the request of the City a number of items were added to the project that were not included in the original scope of work. The largest of these items was the addition of replacement of the two existing 100+ year old water mains. A number of other additions to the streetscape work were added relative to the project. The 18-19 budget included \$200,000 in the water fund budget to cover these additional costs. The unused portion of the 18-19 budget will be carried forward to the 19-20 budget in a future reforecast. The major street fund budget between 18-19 and 19-20 fiscal years budgeted to cover the other increases relative to the changes in the streetscape. The overall Engineering Services charge for this \$6.1 Million project stands at 11% with inclusion of this amendment which is a lower overall rate than other comparable projects.

STAFF RECOMMENDATION: Authorize staff to sign Amendment #1 to the Professional Services Agreement with Prien & Newhof for the Lakeshore Drive project in the amount of \$279,000.

H. Pavement Warranty Resolutions DPW

SUMMARY OF REQUEST: Resolutions to adopt and implement pavement warranty guidelines are a requirement of MCL 247.663. The proposed resolutions are as recommended for adoption by MDOT and the Michigan Municipal

League. Adoption of the guidelines is required prior to September 18, 2019.

STAFF RECOMMENDATION: Authorize the Mayor and Clerk to sign the resolutions to adopt and implement the pavement warranty guidelines as required by law.

I. Amendment to Vacant Building Ordinance and Vacant Building Registration Fees Planning Department

SUMMARY OF REQUEST: Amend Section 10-107 of the City Code of Ordinances to require seasonal homes to be registered with the Public Safety Division, allow additional circumstances for waiving vacant building fees, and eliminate additional fees being applied when registration fees are not paid. Staff is also seeking approval of modification to Vacant Building Registration Fees for buildings zoned for Residential Use and for buildings zoned for Commercial or Industrial Use.

To amend Section 10-107 of the City Code of Ordinances to modify which buildings must be registered and the process and circumstances for waiving fees. The amendment would require seasonal homes to be registered with the Public Safety Division, allow additional circumstances for waiving vacant building fees, and eliminate additional fees being applied when registration fees are not paid. Staff is also seeking approval of modification to Vacant Building Registration Fees for building zoned for Residential use and for buildings zoned for Commercial or Industrial Use. No Fees will be charged until the building has been vacant for one year.

Vacant Building Zoned for Residential Use - \$100 per year

Vacant Building Zoned for Commercial or Industrial Use - \$500 per year

STAFF RECOMMENDATION: To approve the amendments to Section 10-107 of the City Code of Ordinances and to approve the modification of Vacant Building Registration Fees.

Motion by Commissioner Johnson, second by Commissioner German, to accept the consent agenda, as presented, minus items J and K.

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

Nays: None

MOTION PASSES

2019-72 ITEMS REMOVED FROM CONSENT AGENDA:

J. LC Walker Arena Restroom Renovations City Manager

SUMMARY OF REQUEST: City staff is requesting approval of the proposal to undertake significant upgrades to the arena restrooms. The upgrades will include relocating the Western Avenue restrooms to the alley side of the

concourse.

As part of our effort to better utilize the LC Walker Arena's Western Avenue frontage, we are relocating the restrooms to the alley side of the building. The DDA completed a \$1 Million transfer to the Public Improvement Fund in FY 18-19; \$250,000 was allocated to the restroom relocation. All costs above \$250,000 will be absorbed by the Public Improvement Fund.

Staff received two bids for this project; which included construction of the new restaurant along Western Avenue. Platinum Contracting submitted the lowest bid. Platinum's bid of \$407,767.66 was 46% less than J.J. Veneklasen's bid of \$763,250.00

Platinum's original bid allocated \$233,214.07 to the restroom portion of the project. After a number of changes to the construction scheduling and finishes/products, we settled on a project cost of \$246,925.92. Staff is requesting 15% contingency and soft cost budget (unforeseen changes, architect, etc.)

STAFF RECOMMENDATION: Accept the bid from Platinum Construction in the amount of \$246,925.92 and further authorize a contingency and soft-costs budget for the project equal to 15% of construction costs, with a total project not to exceed amount of \$284,000.

Motion by Commissioner Warren, second by Commissioner Rinsema-Sybenga, to accept the bid from Platinum Construction in the amount of \$326,925.92 and further authorize a contingency and soft-costs budget for the project equal to 15% of construction costs, with a total project not to exceed amount of \$284,000.

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

Nays: None

MOTION PASSES

K. AmeriBank RFP Recommendation Economic Development

SUMMARY OF REQUEST: Staff has reviewed proposals from developers for 880 First Street and have selected a preferred developer in 880 First Street LLC, a partnership of Ferguson Development and Brianna Scott.

STAFF RECOMMENDATION: To endorse the development proposal submitted by 880 First Street, LLC and allow staff to negotiate and execute a development agreement.

Motion by Commissioner German, second by Commissioner Johnson, to endorse the development proposal submitted by 880 First Street, LLC and allow staff to negotiate and execute a development agreement.

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

Nays: None

MOTION PASSES

2019-73 NEW BUSINESS:

A. PILOT – Samaritas Planning Department

SUMMARY OF REQUEST: Samaritas is proposing an affordable housing development at 4 W Webster Avenue and is requesting a Payment in Lieu of Taxes (PILOT) for the project. The development will include 53 residential for seniors and a 900 square foot commercial space on the first floor. A service charge of 4% will be imposed, as well as a municipal services fee of 2%.

There will be 53 one-bedroom units. Income targeting is based on 10 units at 30% AMI (Area Median Income); 9 units at 40% AMI; 1 unit at 50% AMI, 17 units at 60% AMI; and 16 units at 80% AMI. The project will have eight project-based vouchers for residents age 55 and over.

STAFF RECOMMENDATION: To approve the Contract for Housing Exemption and the Municipal Services Agreement with Samaritas and to authorize the Mayor and Clerk to sign both.

Motion by Commissioner Warren, second by Commissioner German, to approve the Contract for Housing Exemption and the Municipal Services Agreement with Samaritas and to authorize the Mayor and Clerk to sign both.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Updates were provided to the City Commission on some items.

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

2019-74 CLOSED SESSION:

A. Attorney/Client Privileged Communication

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to go into Closed Session for the purpose of discussing Attorney/Client privileged communication.

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

Nays: None

MOTION PASSES

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to return to open session.

MOTION PASSES

ADJOURNMENT: The City Commission meeting adjourned at 8:20 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/2019	Title: Financial Policy Update
Submitted By: Sarah Petersen	Department: Treasurer
Brief Summary: To update the Poverty Exemption Income Guidelines used to determine poverty tax exemptions.	
Detailed Summary: 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 returns. 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.	
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 updated Poverty Exemption Income Guidelines in the City of Muskegon's Financial Policies as presented in the attached Financial Policies document.	
For City Clerk Use Only:	
Commission Action:	

CITY OF MUSKEGON FINANCIAL POLICIES

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INTRODUCTION

The financial policies presented here set forth the basic policy framework for the financial management of the City of Muskegon. Many of the policies represent long-standing principles, practices, or traditions that have guided the City in the past. They have been brought together in one place to ensure their consistency and to provide Commission and staff a comprehensive reference document for current and future decision-making. While these policies are intended to provide continuity within a constantly changing environment, it is also intended that they be reviewed regularly and amended as needed.

I. OPERATING BUDGET POLICY

The City shall adhere to the requirements of the State of Michigan "Uniform Budget Act" (P.A. 621 of 1978, as amended).

The budget shall be balanced by Fund. Budgeted expenditures of each fund will be less than or equal to the sum of projected fund balance at the beginning of the fiscal year and all revenues which reasonably can be expected to be received during the fiscal year. It will be the annual goal of the City to match current operating expenditures with current operating revenues for each fund. Where this is not possible due to economic downturn or other factors, the "operating deficit" (i.e. operating revenues less operating expenditures) will be clearly highlighted.

Budgets will be adopted on a basis of accounting consistent with generally accepted accounting principles. Revenues are budgeted when they become measurable and available and expenditures are charged against the budget when they become measurable, a liability has been incurred, and the liability will be liquidated with current resources.

The budget shall be adopted through a "Resolution of Appropriation." Appropriations will be made at the departmental or project level for the General Fund Budget and at the fund level for all other budgets. The level of formal appropriation will constitute the "appropriation center" for each fund as defined in the state Uniform Budget Act. Transfers of budgeted funds between appropriation centers will require the formal approval of the City Commission.

The City Manager and City Department Heads are authorized to transfer line-item budget amounts within appropriation centers. Budget transfers between appropriation centers or changes to appropriation center totals require formal amendment by the City Commission, which may be done at any time during the budget year.

Budgets will be carefully monitored throughout the year. Each quarter the budget together with the policies and priorities on which it is based will be thoroughly reviewed by the City Manager to determine whether changes are necessary. An amended budget reforecast will be presented to the City Commission based on this review.

Department Heads are authorized to reallocate budgeted positions between activities under their jurisdiction; however, new positions may only be created with approval of the City Manager and within the budgetary authority approved by the City Commission.

All operating funds of the City are subject to the annual budget process and will be reflected in the annual budget document with the exception of certain "pass-through" funds (such as the current tax fund), trust and agency funds, funds having a separate fiscal year (e.g. CDBG), and non-recurring project and grant funds for which a budget shall be adopted at the time the project is approved.

The enterprise fund and internal service fund operations of the City are intended to be fully self-supporting, i.e. current revenues will cover current expenditures, debt service, and capital costs.

The City's budget will portray both direct and indirect costs of programs whenever practical.

As permitted by state law (P.A. 30 of 1978), the City will fund and maintain a separate Budget Stabilization Fund for the purpose of ensuring that adequate funding is available to maintain levels of municipal services in the event of a major revenue loss.

CONTINGENCY ACCOUNT

A "contingency" line-item will be included in the General Fund Budget for unforeseen operating expenditures. The amount of the contingency account will not exceed five percent (5%) of total budgeted expenditures. If in a given year it is determined that other budgeted operating funds require a contingency line-item, the same policy will be followed for these funds.

II. CAPITAL IMPROVEMENTS POLICY

A capital improvement program (CIP) will be developed for a period of five years. The CIP will outline and prioritize all proposed capital projects, including land acquisitions, land improvements, construction projects and equipment purchases having estimated costs over \$50,000 and useful lives of four or more years. As resources are available, the most current year of the CIP will be incorporated into the current year of the City's operating budget. The CIP will be reviewed and updated annually prior to the beginning of the operating budget cycle.

III. REVENUE POLICY

The City will strive to maintain a diversified and stable revenue system to shelter it from short-run fluctuations in any one revenue source. The revenue mix should combine elastic and inelastic revenue sources to minimize the effect of an economic downturn.

The City will estimate its annual revenues using the best information available.

The City will establish all user charges at a level related to the cost of providing the services and will *annually* revise user fees (with review by the City Commission) to adjust for the effects of inflation, program changes or other factors.

The City will set fees and user charges for each enterprise fund, such as the Water Fund and Sewer Fund, at a level that fully supports the total direct and indirect costs of the activity. Costs shall include the cost of annual depreciation of capital assets.

The City will set fees for other user activities, such as recreation services, at a level to support the direct and appropriate indirect costs of the activity.

The City will aggressively pursue collections of delinquent accounts receivable utilizing appropriate legal means (including outside collection agents) to enforce payment of amounts owed.

IV. FUND BALANCE POLICY INCLUDING GASB STATEMENT 54 POLICIES

Fund balance is an important indicator of the City's financial position. Maintaining reserves is considered a prudent management practice. Adequate fund balances are maintained to allow the City to continue providing services to the community in case of unexpected emergencies or requirements and/or economic downturns.

GENERAL FUND

It will be the City's policy to maintain an unassigned General Fund fund balance equal to at least thirteen percent (13%) of total actual General Fund Revenues for the preceding year. This level of fund balance is consistent with the municipal fiscal stress indicator system used by the Michigan Department of Treasury to monitor the financial health of local units.

FUND BALANCE REPORTING IN GOVERNMENTAL FUNDS

Fund balance will be reported in governmental funds under the following categories using the definitions provided by GASB Statement No. 54:

Nonspendable fund balance – includes amounts that cannot be spent because they are either (a) not in spendable form or (b) legally or contractually required to be maintained in-tact.

Nonspendable amounts will be determined before all other classifications and consist of the following items (as applicable in any given fiscal year):

- The City will maintain a fund balance equal to the balance of any long-term outstanding balances due from others (including other funds of the government)
- The City will maintain a fund balance equal to the value of inventory balances and prepaid items
- The City will maintain a fund balance equal to the corpus (principal) of any permanent funds that are legally or contractually required to be maintained in-tact
- The City will maintain a fund balance equal to the balance of any land or other nonfinancial assets held for sale

Restricted fund balance – includes amounts that can be spent only for the specific purposes stipulated by the constitution, external resource providers, or through enabling legislation.

Committed fund balance – includes amounts that can be used only for the specific purposes determined by a formal action of the government's highest level of decision-making authority.

Commitments will only be used for specific purposes pursuant to a formal action of the City Commission.

Assigned fund balance – includes amounts intended to be used by the government for specific purposes but do not meet the criteria to be classified as restricted or committed. In governmental funds other than the general fund, assigned fund balance represents the remaining amount that is not restricted or committed.

The City Commission delegates to the City Manager the authority to assign amounts to be used for specific purposes. Such assignments cannot exceed the available (spendable, unrestricted, uncommitted) fund balance in any particular fund.

Unassigned fund balance – includes the residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications. In other funds, the unassigned classification should be used only to report a deficit balance from overspending for specific purposes for which amounts had been restricted, committed, or assigned.

BUDGET STABILIZATION FUND

The City will continue to maintain on its books a budget stabilization fund (as originally created under PA 30 of 1978). However, for year-end reporting purposes (in accordance with requirements of GASB 54), the City's budget stabilization fund will be reported as an assigned fund balance of the general fund for the purpose of public improvements.

V. ACCOUNTING, AUDITING, AND FINANCIAL REPORTING POLICY

The City will establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements will be established, however, because unnecessary funds result in inflexibility, undue complexity, and inefficient financial administration.

An independent full scope audit of all City funds will be performed on an annual basis. Selection of the independent auditor will be made by the City Commission.

The City will prepare a Comprehensive Annual Financial Report (CAFR) in accordance with Generally Accepted Accounting Principles (GAAP) as outlined by the Governmental Accounting Standards Board (GASB). It will be the City's goal to complete the annual audit and prepare the CAFR within 120 days of the end of the fiscal year.

The City shall submit annually its CAFR to the Certificate of Achievement for Excellence in Financial Reporting Program sponsored by the Government Finance Officers Association. Recommendations made by GFOA reviewers shall be incorporated into the City's CAFR for the subsequent year.

VI. DEBT POLICY

EXTERNAL DEBT

The City of Muskegon will not use long-term debt to finance current operations.

The City of Muskegon will follow a policy of full disclosure and report all material facts about its financial condition in a timely manner.

The retirement of bonds issued by the City (or its component units and authorities) will be equal to or less than the useful life of the project being funded.

Whenever possible the City of Muskegon (including its authorities) will limit its issuance of debt to a maximum of \$10 million per calendar year to maintain the yield advantages associated with bank qualified obligations.

The City will structure bond issues to maintain level or decreasing debt service schedules and maintain debt service payments as a predictable and manageable part of the operating budget.

"Pay-As-You-Go" financing will be used when practical. However, when the City utilizes long-term debt financing it will ensure that the debt is financed soundly by:

- Conservatively projecting revenue sources that will be utilized to repay the debt.
- Financing the improvement over a period not greater than the useful life of the improvement, and
- Determining that the benefits to be derived outweigh the total costs (including interest costs) of the project.

Capital lease, certificates of participation, and lease-purchase financing will be treated as debt financing and be subject to the same policies.

The City will award sale of its bonds to the responsible bidder whose bid produces the lowest "true interest cost" (TIC) to the City over the life of the bond issue.

The City (and its Authorities) will normally issue debt through a competitive process in which formal bids will be solicited from as many interested parties as possible. Under some circumstances, it is in the City's best interest to issue debt through a negotiated sale process instead of using a competitive process. The negotiated sale process will only be used when: 1) the nature of the debt issue is unique and requires particular skills from the investment banks involved, 2) the interest rate environment or other economic factors that may affect the issue are particularly volatile and the negotiated sale process can provide needed stability or, 3) the debt issue is bound by a closing deadline. In all cases where the negotiated process is utilized, the underwriter/manager will be selected by a competitive review of their fees, qualifications, and recent performance.

INTERFUND LOANS

In some situations it may be cost effective to loan money from one City fund to another in lieu of borrowing from external sources. Such interfund loans may only be made with formal approval of the City Commission including establishment of a fixed repayment schedule. Interest on interfund loans will be charged at the rate then available on U.S. Treasury notes having a comparable maturity.

VII. FIXED ASSETS CAPITALIZATION AND DEPRECIATION POLICY

CAPITALIZATION THRESHOLDS

Fixed assets are assets of a long-term character (i.e. a minimum useful life of two years) which are intended to continue to be held and used, such as land, buildings, improvements other than buildings, machinery, vehicles and equipment. This policy is intended to establish guidelines for accounting for, capitalizing and depreciating fixed assets held by the various City funds.

Category Capitalization Threshold (Unit Cost)

Land \$ N/A

Land Improvement 10,000

Buildings 10,000

Equipment 10,000

Vehicles 10,000

Office Equipment and Furniture 10,000

Only those items having *unit* costs in excess of the threshold limits specified above will be considered fixed assets for purposes of City accounting records. Fixed assets in the City's proprietary type funds (i.e. Enterprise, Internal Service) shall be capitalized in the year of purchase and depreciated over their estimated useful lives. Fixed assets of all other funds shall be maintained by the City and depreciated over their estimated useful lives and shown on the City's full accrual Government Wide Statement. These include certain public domain general fixed assets consisting of improvements such as roads, bridges, curbs and gutters, streets and sidewalks, drainage systems, and lighting systems.

General fixed assets are valued at historical cost or estimated historical cost if actual cost is not available. Donated assets are valued at their estimated fair value on the date donated. Property and equipment of the enterprise funds and internal service funds are carried at cost.

DEPRECIATION AND ESTIMATED USEFUL LIFE

Depreciation of Fixed Assets in the City's Proprietary Funds shall be accomplished using the simple straight life method. The estimated useful life of assets will be based on IRS policies, past experience, or other reliable sources. Useful lives typically will not exceed fifty (50) years.

VIII. LIABILITY INSURANCE CLAIM SETTLEMENTS

Under the Michigan Municipal Risk Management Authority (MMRMA) program the City is self-insured for the first \$150,000 of any single liability claim. A portion of the City's annual "premium" paid to MMRMA is set aside in a reserve account to cover this retained risk and no disbursement can be made from this reserve without prior authorization from the City.

When a claim is made against the City, all pertinent information is turned over to MMRMA. The "claims adjusting" section of MMRMA then investigates the claim thoroughly and recommends a course of action to the City (e.g. deny claim, settle for no more than X dollars, etc.).

The following policy will govern the handling of such liability claims:

- The City Manager or the Finance Director is authorized to approve settlements up to \$15,000 provided that the settlement is consistent with the recommendation of the MMRMA.
- Settlements for amounts less than \$15,000 which are not consistent with the recommendation of MMRMA may only be authorized with concurrence of the City Attorney and timely notification of the City Commission.
- Proposed claim settlements in excess of \$15,000 must be reviewed and approved by the City Commission.

IX. POLICY FOR ADJUSTING UNCOLLECTIBLE ACCOUNTS

During the normal course of conducting its business, the City invoices outside parties for a variety of reasons ranging from taxes, fines, or penalties to the sale of City services or goods. Most billings are paid promptly and the majority of those that are not are ultimately collected through discontinuance of service, use of third-party collection services, or other means. However, it is periodically necessary to adjust the City's receivable records by "writing-off" accounts deemed to be uncollectible or by making an adjustment to reflect the negotiated settlement of a disputed account.

The City's policy for adjusting accounts receivable shall be:

The City shall maintain in its general ledger records delinquent accounts receivables for the five most recent years. A reserve for estimated uncollectible accounts receivable shall be maintained in the general ledger. The reserve will be equal to one-half of the fund's delinquent accounts receivable outstanding as of each June 30th. At the close of each fiscal year, the City will write-off any balances remaining uncollected that are more than five years old. Accounts that are written-off may be turned over to a private collection agency for additional collection efforts.

For receivables under five years old preliminary authorization for adjustments or write-offs of individual accounts receivable for amounts not in excess of \$15,000.00 may be given by the City Manager or other responsible official designated by the City Manager (e.g. the City Treasurer in the case of water bills).

The adjustment or write-off of individual accounts receivable for amounts in excess of \$15,000.00 shall be approved by the City Commission on an individual basis.

Adjustments to accounts receivable which are determined by the City Treasurer to be necessary due to administrative error may be made without going through the procedure outlined above.

X. POLICY FOR ADJUSTING DELINQUENT REAL & PERSONAL PROPERTY TAXES

The City's policy for adjusting delinquent personal property taxes shall be as follows:

- A reserve for estimated uncollectible personal property taxes shall be maintained in each fund having delinquent personal property tax receivables. The reserve will be equal to one-half of the fund's delinquent personal property taxes outstanding as of each June 30th.
- The City shall only maintain in its general ledger records delinquent personal property tax receivables for the two most recent years in an attempt to comply with the GASB 60 day rule. At the close of each fiscal year, the City will write-off any balances remaining uncollected that are more than two years old. Balances written off may be turned over to a private collection agency for additional collection efforts.

Real property taxes that become delinquent are turned over to the County treasurer for collection. The City is generally made whole at the outset of the collection process and only "charged back" for those taxes that remain delinquent after 2-3 years of unsuccessful collection effort. If in the City's judgment a delinquent account will ultimately be uncollectible through this process the City will escrow the funds received from the County to cover an eventually charge back.

XI. INVESTMENT POLICY

The Director of Finance serves as the City's Investment Officer as defined in Michigan Compiled Laws (MCL) Chapter 129.91.

This Investment Policy replaces any previously dated investment policies, guidelines or lists of authorized investments.

SCOPE

This Policy shall apply to the investment management of all financial assets under control of the City.

To the extent practical, all excess cash, except for cash in certain restricted and special accounts, shall be pooled for investment purposes. The investment income derived from the pooled investment account shall be allocated to the contributing funds based upon the proportion of the respective average balances relative to the total pooled balance. Interest earnings shall be distributed to individual funds on a monthly basis.

OBJECTIVES

The City's principal investment objectives are (in order of importance):

- SAFETY: Preservation of capital and protection of investment principal.
- LIQUIDITY: Maintenance of sufficient liquidity to meet anticipated cash flows.
- YIELD: Attainment of a market value rate of return.

PRUDENCE

The standard of prudence to be used for managing the City's assets shall be the "prudent investor rule" which in general states that investments shall be made with the judgment and care that under the circumstances then prevailing, persons of prudence, discretion and intelligence would exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

The City recognizes that no investment is totally risk less and that the investment activities of the City are a matter of public record. Accordingly, the City recognizes that occasional measured

losses are inevitable in a diversified portfolio and shall be considered within the context of the overall portfolio's return, provided that adequate diversification has been implemented and that the sale of a security is in the best long-term interest of the City.

The Director of Finance and authorized investment personnel acting in accordance with written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that the deviations from expectations are reported in a timely fashion to the City Commission and appropriate action is taken to control adverse developments.

DELEGATION OF AUTHORITY

The Director of Finance may delegate the authority to conduct investment transactions and to manage the operation of the investment portfolio to the Assistant Finance Director and/or the City Treasurer. No person may engage in an investment transaction except as expressly provided under the terms of this Investment Policy.

The City may engage the support services of outside professionals in regard to its investment program, so long as it can be clearly demonstrated that these services produce a net financial advantage or necessary financial protection of the City's financial resources.

AUTHORIZED SECURITIES AND TRANSACTIONS

All investments of the City shall be made in accordance with MCL Chapter 129.91 - 129.96 (Act 20 of 1943). Any revisions or extensions of these sections of MCL will be deemed to be part of this Investment Policy immediately upon being enacted.

INVESTMENT DIVERSIFICATION AND LIQUIDITY

It is the intent of the City to diversify the investments within the portfolio to avoid incurring unreasonable risks inherent in over investing in specific instruments, individual financial institutions or maturities. The maximum investment in each of the following categories shall not exceed 25% of the total portfolio: Commercial Paper, Eligible Bankers Acceptances and uninsured Certificates of Deposit.

To the extent possible, investments shall be matched with anticipated cash flow requirements and known future liabilities. The City shall maintain at least 10% of its total portfolio in cash and/or instruments maturing in 30 days or less.

SELECTION OF BROKER/DEALERS

Broker/dealers will be selected by the Director of Finance on the basis of their expertise in public cash management and their ability to provide services for the City's account. Approved broker/dealers and the firms they represent shall be licensed to do business in the State of Michigan and as such are subject to the provisions of Michigan Statutes relating to the investment of public funds. Broker/dealers shall attest in writing that they have received and reviewed a copy of this Policy.

The City may purchase commercial paper, CD's and other securities from direct issuers as long as they meet the criteria outlined in the Authorized Securities and Transactions section of this Policy.

SELECTION OF DEPOSITORY BANKS

Periodically, through a Request for Proposal process, the City shall select a bank to provide checking account and other banking services for the City. To be eligible for authorization, a bank

must (1) be a member of the FDIC, (2) be eligible to be a depository of funds belonging to the State of Michigan, (3) maintain a permanent office within the City of Muskegon and, (4) be financially stable and sound as periodically determine through credit analysis provided through a reputable bank rating service.

Notwithstanding provision (3) in the preceding paragraph, Time Certificates of Deposit described in the section of this policy, "Authorized Securities and Transactions" may be purchased from authorized banks if they meet requirements of Act 20.

SAFEKEEPING AND CUSTODY

The Director of Finance shall select a bank to provide safekeeping and custodial services for the City. The custodian bank will be selected on the basis of its ability to provide services for the City's account and the competitive pricing of its safekeeping related services, and shall be financially stable and sound as periodically determined through credit analysis provided through a reputable bank rating service.

The Director of Finance shall maintain a file of the credit rating analysis reports performed for the custodian bank. Bank credit analysis shall be performed on a semi-annual basis.

REPORTING

Accounting and reporting on the City's investment portfolio shall conform to Generally Accepted Accounting Principles (GAAP) and the Governmental Accounting Standards Board (GASB) recommended practices. On a monthly basis, the Director of Finance shall submit to the City Commission an investment report, listing the investments held by the City, the current market valuation of the investments and performance results. The report shall include a summary of investment earnings during the period.

XII. PETTY CASH USES AND LIMITS

Petty cash accounts may be established in such locations and in such amounts as may be determined necessary by the City Manager. Petty cash disbursements up to \$300.00 are permitted for the following purposes: 1) for the expedited purchase of minor goods or services, 2) to provide immediate reimbursement to employees for travel or other costs paid out of their own pocket in the conduct of City business and, 3) to provide immediate refunds to customers as warranted. All uses of petty cash must be fully supported by receipts or other appropriate documentation. Petty cash procedures shall be reviewed periodically by the City's Finance Department.

Employees traveling on City business may receive a petty cash travel advance of up to \$300.00 from the City Treasurer's Office to be used for travel purposes. The employee's department head must approve travel advances. Cash advances of more than \$300.00 are discouraged and will only be made upon written authorization of the employee's department head and the City manager.

In order to distinguish travel advance requests from expense reporting, while simplifying the process to the extent possible, there is a separate form for that purpose. Please note that with the *Request for Petty Cash Travel Advance* form, the requesting party must acknowledge that receipts and any money owed the City must be returned within ten days of return from travel. If the money and/or expense documentation is not returned, the employee authorizes the full amount of the travel advance to be deducted from their paycheck along with a \$5.00 processing fee. The *Request for Petty Cash Travel Advance* forms are available through the City Treasurer's Office.

Note that all travel expenses should be reported on the *Travel Expense Reporting Form* as soon as possible upon returning from travel. *Travel Expense Reporting Forms* are available on the City's Intranet Page.

XIII. PROCEEDS FROM SALE OF CITY-OWNED REAL ESTATE

From time to time the City sells real estate that it owns. It is City policy that, unless required by law or by specific direction of the City Commission, proceeds from such property sales shall be deposited to the City's Public Improvement Fund to be used to finance general purpose capital needs.

In the case of tax reverted property sold by the City, sale proceeds will first be used to reimburse appropriate City funds for expenses incurred in maintaining and selling the property. Any remaining sale proceeds will be distributed to the City and other taxing jurisdictions in the same manner as regular property taxes.

XIV. PROCUREMENT CARD PROGRAM POLICY

GENERAL

Regular government purchasing methods, such as purchase orders, can be cumbersome and costly in relation to the value of goods being purchased. To promote operational efficiency, the City has adopted a procurement card purchasing program for use with small dollar value purchases.

A number of unique controls have been developed for the procurement card program. These controls will ensure that cards can be used only for specific purchases and within specific dollar limits. In addition, documentation of all purchases is required by each cardholder with further approval from the department head and the City Manager's office before payment is made.

The unique procurement card issued by the City has the employee's name embossed on it together with the City's tax-exempt status. No one other than the employee whose name is on the card may use the card. **CITY ISSUED PROCUREMENT CARDS MAY ONLY BE USED BY DESIGNATED CITY EMPLOYEES FOR THE PURCHASE OF GOODS OR SERVICES FOR THE OFFICIAL BUSINESS OF THE CITY OF MUSKEGON. UNDER NO CIRCUMSTANCES IS THE PROCUREMENT CARD TO BE USED FOR PERSONAL PURCHASES.**

DESIGNATION OF RESPONSIBLE OFFICIAL

The Finance Director is designated as the official responsible for overseeing compliance with this procurement card policy including procurement card issuance, accounting for procurement card transactions, monitoring and payment of procurement card statements.

TRANSACTION AMOUNTS

The procurement card may be used for purchases of individual items up to \$2,500.00 in value. The *total monthly dollar value* of transactions on each procurement card will generally be limited to \$5,000.00. The City Manager may establish higher monthly credit limits for employees whose positions require higher than normal use of the procurement card. The total combined authorized credit limit of all procurement cards issued by the City shall not exceed five percent of the City's total budget for the current year. All purchases made with a City procurement card must be fully supported by receipts, invoices, and other documentation. Such documentation is to be attached to the monthly procurement card statement and cardholder's reconciliation.

CREDIT CARD REBATES/REWARDS

To the extent the City earns rebates or rewards from use of procurement cards, the rebates will be recorded as general fund income used to offset the costs of bank service charges.

CREDIT CARD USE FOR LARGE RECURRING ITEMS

Some vendors accept credit card payment for large recurring bills such as electric bills and solid waste collection. Since the City can earn rebates on credit card use, it may be to the City's benefit to pay these bills via credit card. The City manager and/or finance director will inform the City commission of these opportunities in advance and will establish special use credit card accounts that are electronically restricted to the specific type of transaction/vendor.

EMERGENCY TRANSACTION AMOUNTS

In the event of an extended emergency, the City Manager is authorized to establish higher procurement card limits on a temporary basis so that City employees may procure goods and services necessary to deal with the emergency. In no event are emergency transaction limits to be in effect for more than thirty days.

INTEREST COSTS AND SALES TAX

It is the City's policy to pay in full each month on or before the due date the total balance due on its procurement cards thereby avoiding interest charges. As a municipality, the City is exempt from payment of state sales tax. City procurement card users are expected to exercise care in conducting transactions to ensure that they are not incorrectly charged for sales tax.

OTHER PURCHASING POLICIES

The procurement card is a supplement to other purchasing procedures such as purchase orders. As with the other purchasing methods, the following conditions must be met when using your procurement card.

- Each single purchase may be comprised of multiple items, but the total cannot exceed the single purchase dollar limit on your procurement card.
- When purchases exceed the established dollar limits, the normal procedures of using purchase orders must be followed unless written authorization is given by the employee's department head.
- The least expensive item that meets your basic needs should be bought and competitive quotes must be obtained in accordance with existing purchasing policies.
- Cardholders must follow normal budgetary control procedures to ensure that sufficient funds are available prior to making purchase.
- Use of the procurement card does not relieve the cardholder from complying with Federal, State and City ordinances, regulations, policies and procedures.
- Use of the procurement card is not intended to replace effective procurement planning which enable volume discounts.
- Purchases are not to be split to circumvent procurement regulations.

RESTRICTIONS ON USE

The following list covers purchases for which procurement cards use is prohibited:

- Cash advances through bank tellers or teller machines.
- Traveler's Checks.

- Purchase of gasoline or diesel fuel for City vehicles except in emergencies (use City pumps or Fuelman System).
- Purchase of items stocked in City inventory unless required in emergencies.
- Additional specific restrictions as deemed necessary by individual departments.

XV. ELECTRONIC PAYMENTS

Modern technology makes it possible to transfer funds electronically in lieu of issuing paper checks. This technology offers many benefits to users including lower transaction costs, reduced opportunities for fraud, and better cash management control. The City has effectively utilized this technology for several years for purposes such as direct deposit of employee paychecks and automatic payment of customers' water bills. The City supports continued use and expansion of electronic payments technology for payment of vendors and other uses provided appropriate internal controls are established. The City Manager and Finance Director, in conjunction with the City's independent auditors, are authorized to develop the necessary procedures and controls for expanded use of this technology in the City of Muskegon.

XVI. ACCEPTANCE OF CREDIT CARD PAYMENTS

The City has studied the costs and benefits of accepting credit card payments from customers and has determined that credit card acceptance significantly enhances customer service and provides administrative and other benefits to the City that outweigh the associated costs. Accordingly, the City's policy shall be to accept credit cards for payment of all City bills and invoices *except routine payment of property taxes*. The City Treasurer or Income Tax Administrator may permit payment by credit card for property taxes in specific collection cases where they have determined it is in the City's best interest to do so.

XVII. TRAVEL POLICY AND GUIDELINES

SCOPE

This policy applies to all City of Muskegon elected officials, employees, board members, volunteers and others when travelling on official City business and/or travelling at City expense.

AUTHORIZED TRAVEL

In the normal course of conducting City business, employees are required to travel for purposes of work-related meetings, training opportunities, professional conferences, or other business purposes. As part of the annual budget process, departments' request funding for travel purposes for the coming year. Department heads have full authority to approve travel for their employees (without additional authorization) within limits of the department's approved travel budget. Travel that is significantly beyond the parameters of the department's travel budget should be approved by the City Manager together with a corresponding budget adjustment if required.

TRAVEL COSTS

The City recognizes that its employees are responsible adults who take the same care in incurring travel expenses while on City business as when traveling on personal business. Accordingly, this policy does not establish rigid cost limits for lodging, meals, or other travel costs. Instead, the following general guidelines are offered while recognizing that special circumstances may dictate that employees incur costs beyond these guidelines:

Lodging - Lodging costs should generally range between \$75.00 - \$150.00 per night depending on location (based on single occupancy and including local taxes which the City is not exempt from).

Employees are relied upon to use their good judgment in selecting safe and economical accommodations.

Two important factors to remember when making hotel reservations: 1) you should always ask for special "government" rates that are typically deeply discounted from regular rates and, 2) you should identify the travel as official City business exempt from state sales tax and inquire as to any specific documentation requirements the hotel may have.

Costs for in-room movies, exercise rooms, or other hotel services not included in the basic room rate are not reimbursable by the City.

Meals - Meal costs should generally not exceed \$40.00 per person for each full day of travel (including gratuities and taxes). For partial day travel or individual meal reimbursements, the following limits will apply:

Breakfast	\$8.00	Travel Before 8:00 AM
Lunch	\$10.00	Travel Before 12:00 Noon
Dinner	\$22.00	Travel Before 6:00 PM

Individual meal limits will apply regardless of whether or not reimbursement is sought for other meals during the day. For example, it is not permissible to "skip" breakfast and lunch in order to be reimbursed \$40.00 for a dinner; instead, the dinner will only be reimbursed up to the \$22.00 limit specified above. Often lunch or other meals are included in the registration price of a seminar or conference. It is expected that employees attending these functions will partake in these meals. The City will not reimburse meal costs if the employee chooses to forgo the conference meal and dine elsewhere.

Transportation - Vehicle travel may be by either City vehicle or the employee's private vehicle. If a private vehicle is used, reimbursement will be based on the number of miles traveled times the allowable IRS business mileage rate in effect at that time. Air travel is generally used for destinations more than 300 miles away. Employees are encouraged to take advantage of discounted airfares and should utilize the Muskegon County Airport whenever possible.

Employees may elect to use private vehicles for travel to destinations more than 300 miles away and will be reimbursed based on the current IRS mileage rate or equivalent round trip coach airfare for that destination, whichever is less. However, no reimbursement will be made for added lodging or meal costs incurred because of the extra travel time.

Employees who elect to use their own vehicle should be aware that under the laws of the State of Michigan, every vehicle owner is required purchase insurance that is the primary coverage for that vehicle. While using a private vehicle for City travel, any automobile liability insurance coverage in force for the City is excess coverage only for the employee/vehicle owner.

Other Costs - Other incidental costs (such as parking, ground transport, phone calls), should not exceed an average of \$15.00 per day. Rental car costs generally will not be reimbursed by the City as it is expected that employees will utilize lodging in close proximity to the conference or other event. In extraordinary circumstances where the employee deems it necessary to rent a car, reimbursement will only be made with the written authorization of the City manager.

Traveling With Spouse - There is no objection to employees inviting their spouse to travel along on City business. However, the City will pay for none of the spouse's travel expenses and care should be taken to maintain separate records of the employee's reimbursable travel costs.

PAYING FOR TRAVEL COSTS

Methods available for employees to pay travel costs include the following:

City Credit Card - Employees who have been issued a City of Muskegon credit card should use it to pay their travel costs. Additionally, in each department a credit card holder is designated to use their card to pay for other employees' travel costs that can be readily handled in advance (e.g. airline tickets, conference registration, hotel, etc.).

Personal Credit Card - Employees who have not been issued a City credit card may find it convenient to pay travel costs on their own personal credit card and receive cash reimbursement from the City.

Petty Cash Advance - Employees traveling on City business may receive a petty cash travel advance of up to \$300.00 from the City Treasurer's Office to be used for travel purposes. The employee's department head must approve travel advances. Cash advances of more than \$300.00 are discouraged and will only be made upon written authorization of the employee's department head and the City manager.

In order to distinguish travel advance requests from expense reporting, while simplifying the process to the extent possible, there is a separate form for that purpose. Please note that with the *Request for Petty Cash Travel Advance* form, the requesting party must acknowledge that receipts and any money owed the City must be returned within ten days of return from travel. If the money and/or expense documentation is not returned, the employee authorizes the full amount of the travel advance to be deducted from their paycheck along with a \$5.00 processing fee. The *Request for Petty Cash Travel Advance* forms are available through the City Treasurer's Office.

Note that all travel expenses should be reported on the *Travel Expense Reporting Form* as soon as possible upon returning from travel. *Travel Expense Reporting Forms* are available on the City's Intranet Page.

REPORTING REQUIREMENTS FOR TRAVEL EXPENSE REIMBURSEMENT

Travel expense reporting has been simplified to the extent possible. The following guidelines apply to travel expense reporting:

- Travel expenses are to be reported on the Travel Expense Reporting Form included with this pamphlet as soon as possible upon returning from travel.
- Only expenses for which cash reimbursement is sought by the employee need to be reported. Expenses paid in advance or expenses paid by City credit card should not be included on the Travel Expense Reporting Form.
- **Expenses must always be supported by receipts or other documentation.**
- If total expenses to be reimbursed are \$300.00 or less, you may obtain immediate reimbursement from the City Treasurer's Office.
- If total expenses to be reimbursed are more than \$300.00, they will be reimbursed as a separately itemized, non-taxable category on the employee's regular bi-weekly paycheck. Accordingly, travel expense report forms must be submitted to the Finance Office with all necessary approvals no later than 5:00PM on the Friday prior to payday for reimbursement on that paycheck.

DOUBLE-DIPPING

It should go without saying that City expects honest and ethical behavior from its employees in handling travel expense matters. Travel expenses that are partially or fully paid by outside parties (such as federal agencies) are not to also be submitted for reimbursement from the City. Any employee found to be deliberately misreporting travel expenses will be subject to disciplinary action as well as potential prosecution.

LOCAL BUSINESS EXPENSES

In addition to travel expenses, it is sometimes appropriate for City employees to incur costs on behalf of boards or committees or in the course of entertaining visiting guests. Department heads have full authority to approve such costs (within budgetary limits) and the same general guidelines as outlined above for employee travel expenses should be followed.

XXVIII. CELL PHONE POLICY

GOAL

It is the goal of the City to provide cellular telephones to City employees who need them to perform the essential functions of their jobs.

SAFETY

The first concern of the City is the safety of their employees and the public. Employees should use proper safety procedures at all times when using a cellular phone, especially while operating equipment, driving on City business or performing similar duties. This includes pulling to the side of the road if feasible when making or receiving a cellular phone call. Text messages under no circumstances should be sent or viewed while driving.

POLICY

Department Heads and Supervisors may request cellular phones for employee use when the expense and use of the phone is justifiable in terms of improved service and responsiveness to citizens and/or other employees. Cellular phones should be provided only when they are required for the employee to perform essential functions of his/her job. Additionally at the discretion of the Department Head/Supervisor enhanced features or smart phones may be requested. Smart phones or a phone with enhanced features will require an employee to share in the cost. This amount will be determined by Finance annually. The City realizes the phone will be used for personal use as well as City use however excessive use or abuse of the phone and/or phone services could result in additional charges or cancellation of phone services.

It is the responsibility of the Department Head/Supervisor to review the monthly statements and report any concerns to the Finance Department.

With approval from the City Manager and Department Head an employee may elect to use his/her own cellular phone for City business. The phone must be fully available during the employee's scheduled work hours. Employees using their personal cellular phone will be reimbursed per month for the use of their phone. This reimbursement is taxable income to the employee and the amount will be determined by Finance annually. Certain employees who are required to have enhanced phone features/smart phones for their job may be reimbursed at a higher rate with approval from the City Manager.

XIX. CASH HANDLING POLICY FOR DEPARTMENTS ACCEPTING PAYMENTS FROM CITIZENS

This policy is intended as a guide and supplement to other measures which should exist surrounding the collection, timely deposit, and recording of collections in the records at each City location.

For some City departments that have higher volumes of cash transactions, a cash register is used to record receipt transactions. All transactions must be entered in the register and **a receipt must be issued to each customer**. For other departments, the method for recording and balancing is with a receipt book that has pre-numbered receipts. This method is acceptable with the understanding that all transactions are entered, and **a receipt is issued to every customer**. The pre-numbered receipt books are issued to City departments by the treasurer's office.

City departments handling cash have starting cash, which is used for making change for their customers. When balancing out the daily transactions, you first remove the starting cash amount. The receipts should offset the money (cash and checks) that you have remaining. If this is not the case, then, you have an overage or a shortage. This must be noted on your pink "cash-out" slip/sheet. Two signatures are required for all deposits. If a discrepancy (shortage or overage) occurs, the department's authorized person (usually the department head) must review and sign the cash-out slip/sheet.

For departments that have a cash register, on a daily or other periodic basis, you should enter a summary of the receipt transactions into the GEMS Financial System's Cash Receipts module on a "cash sheet" and generate a "Cash Receipts Edit" report. The "Cash Receipts Edit" report, cash register transaction summary tape, money received, an adding machine tape and/or item count of checks and the "cash-out" sheet should be hand delivered to the City Treasurer's office each day. The treasurer's office will issue a receipt for the total amount deposited.

For departments without a cash register, on a daily or other periodic basis, you should prepare a deposit report detailing the receipt transactions being deposited. Each deposit report includes all pre-numbered receipt numbers used by the department since the last report, even if the receipt was voided. The deposit report, money received, an adding machine tape and/or item count of checks and the "cash-out" sheet should be hand delivered to the City Treasurer's office each day. The treasurer's office will issue a receipt for the total amount deposited.

If assistance is needed in reference to any of the above, please contact the treasurer's office.

XX. ACCOUNTS PAYABLE

The City fully recognizes the importance of paying its vendors and suppliers in a timely manner. Late vendor payments result in higher costs as well as damage to the City's reputation. Accordingly, it is City policy to issue accounts payable (A/P) checks on the second and fourth Fridays of each month. This cycle will ensure that (provided timely departmental approvals are obtained) vendor payments will be made within 30 days of invoice receipt.

City departments are expected to plan their payment transactions around the regular A/P check cycle; off-cycle A/P checks will not be permitted without the approval of the Finance Director or Assistant Finance Director. In emergency situations where payment cannot wait for the regular A/P check cycle, arrangements can be made with the Finance Department to electronically transfer funds to the vendor's account.

XXI. ACCOUNTS RECEIVABLE AND BANKRUPTCY

ACCOUNTS RECEIVABLE BILLING OUTSOURCE

The City's Collection Agency will handle billings for the following types of invoices:

- Environmental
- Demolition and Board Ups
- Impounds
- Vacant Building

The Collection Agency will generate the initial invoice along with any follow up/delinquent notices, pre-collection notices and collection notices. In an attempt to promote timely payment, invoices for environmental and demolition issues paid within the first 30 days will receive a 20% discount. These invoices will only be recorded as revenue to the City when they are paid.

Environmental Invoices can be appealed through the Planning department within 30 days from the date of the original invoice.

ACCOUNTS RECEIVABLE PROCEDURES

Each department will input invoices through the City's A/R system software for billing types not handled by the Collection Agency. The Treasurer's Office will process the Receivables every Friday and mail out the invoices. Each department should periodically but no less than monthly review invoices their office has initiated for payment. It is up to the individual departments to monitor the payment of their accounts and notify the Finance Division of problems. The Treasurer's Office will review and turn over to the Collection Agency invoices outstanding for 90 or more days.

LEGAL ACTION

Legal action may be used only as a last resort to collect on delinquent accounts. On the advice of the Collection Agency it will be up to the City Treasurer and/or Income Tax Administrator / Deputy Treasurer to determine which accounts warrant such action taking into consideration time and added costs in collecting the delinquent account(s).

SETTLEMENTS

From time to time, debtors may want to enter into negotiations regarding their delinquent account(s). The City Treasurer and/or Income Tax Administrator / Deputy Treasurer will have the authority to enter into meaningful settlement negotiations with the debtor for accounts under \$15,000.

OBSERVATION OF COLLECTION LAWS

The City Treasurer and/or Income Tax Administrator / Deputy Treasurer will ensure that all Federal, State and local laws are observed and understood by all whom engage in collection activities on behalf of the City of Muskegon.

BANKRUPTCIES

Bankruptcy notices should always be forwarded to the Income Tax Administrator / Deputy Treasurer, regardless of whether the department receiving the notice of bankruptcy has an outstanding receivable balance due from the debtor or not. Other departments throughout the City may also have business pending with the debtor and must be notified of the bankruptcy status.

Upon receipt, the Income Tax Administrator / Deputy Treasurer will circulate a notice to various departments which typically deal with receivable accounts and who may be maintaining a collection account with the debtor. Departments wishing to be included in the routing on a regular basis should contact the Income Tax Administrator / Deputy Treasurer.

If a department receives correspondence from the Income Tax Administrator / Deputy Treasurer requesting information on outstanding debts involved in a bankruptcy, the department should return to the Income Tax Administrator / Deputy Treasurer the requested information, with supporting documents, within seven days of receipt. The Income Tax Administrator / Deputy Treasurer will consolidate information from the City as a whole and prepare and file a claim on a timely basis.

Departments utilizing an outside collection agency should notify the agency that upon receipt of a bankruptcy notice, the agency is required to close and return the account to the City immediately. Under no circumstances is an outside agency, such as a collection agency, to file a bankruptcy claim on behalf of the City.

The Income Tax Administrator / Deputy Treasurer will review certain accounts that may be forwarded to the City Attorney's Office for consideration due to the complexity of the bankruptcy proceeding.

Upon receipt of a bankruptcy discharge or dismissal, the Income Tax Administrator / Deputy Treasurer will notify all departments involved.

XXII. PAYROLL

DEDUCTIONS

The City is required to make various deductions from employee paychecks for taxes, pension contributions, union dues and other purposes mandated by law, union contracts, or terms of employment. Additionally, the City offers a range of "voluntary" deduction programs deemed to be of general benefit to employees. These include deferred compensation retirement savings, additional life insurance purchase, and U.S. Savings Bonds.

From time to time, outside firms (typically offering investment and/or insurance products) approach the City about including their programs on the City's voluntary payroll deduction menu. Although such programs are touted as "employee benefits having no-cost to the City", the fact is that these programs can entail significant costs not only for payroll administration, but also in terms of employee time consumed in marketing or educational efforts. The City's general policy will be to deny such requests. However, the City may elect to implement voluntary deduction programs it deems to be worthwhile.

DIRECT DEPOSIT

The City encourages Direct Deposit of payroll checks both as a means to improve operational efficiency and reduce opportunities for fraud. To the extent allowed by state law, the City may elect to mandate all employees be paid via Direct Deposit. The following policies will govern the City's Direct Deposit practices:

- New employees will be given the choice of full direct deposit to one or multiple financial institution and/or accounts or to receive a paper check.
- Current employees will no longer be able to choose partial direct deposit and receipt of a paper check.

- Employees who currently direct deposit a portion of their payroll and receive a paper check will not be allowed to make any changes to their deposit accounts or amounts unless they are switching to full direct deposit.
- To the extent allowed by state law, the City may elect to mandate all employees be paid via Direct Deposit.

XXIII. SOCIAL SECURITY NUMBER PRIVACY POLICY

Section 1. Purpose

The purpose of this policy is to protect confidential information from individuals and businesses that have contact with the City of Muskegon.

Section 2. Definitions

(a) "Computer", "computer network", or "computer system" mean those terms as defined by the City of Muskegon's Information Technology Department

(b) "Mailed" means delivered by United States mail or other delivery service that does not require the signature of recipient indicating actual receipt.

(c) "Person" means an individual, partnership, Limited Liability Company, association, corporation, public or nonpublic elementary or secondary school, trade school, vocational school, community or junior college, college, university, state or local governmental agency or department, or other legal entity.

(d) "Publicly display" means to exhibit, hold up, post, or make visible or set out for open view, including, but not limited to, open view on a computer device, computer network, website, or other electronic medium or device, to members of the public or in a public manner.

(e) "Website" means a collection of pages of the world wide web or internet, usually in HTML format, with clickable or hypertext links to enable navigation from 1 page or section to another, that often uses associated graphics files to provide illustration and may contain other clickable or hypertext links.

Section 3. Prohibited use of social security number of employee, student, or other individual; exceptions.

(1) Except as provided in subsection (2), a person shall not intentionally do any of the following with the social security number of an employee, student, or other individual:

(a) Publicly display all or more than 4 sequential digits of the social security number.

(b) Subject to subsection (3), use all or more than 4 sequential digits of the social security number as the primary account number for an individual. However, if the person is using the social security number under subdivision (c) and as the primary account number on the effective date of this act, this subdivision does not apply to that person until January 1, 2006.

(c) Visibly print all or more than 4 sequential digits of the social security number on any identification badge or card, membership card, or permit or license.

(d) Require an individual to use or transmit all or more than 4 sequential digits of his or her social security number over the internet or a computer system or network unless the connection is secure or the transmission is encrypted.

(e) Require an individual to use or transmit all or more than 4 sequential digits of his or her social security number to gain access to an internet website or a computer system or network unless the connection is secure, the transmission is encrypted, or a password or other unique personal identification number or other authentication device is also required to gain access to the internet website or computer system or network.

(f) Include all or more than 4 sequential digits of the social security number in or on any document or information mailed or otherwise sent to an individual if it is visible on or, without manipulation, from outside of the envelope or packaging.

(g) Subject to subsection (3), beginning January 1, 2006, include all or more than 4 sequential digits of the social security number in any document or information mailed to a person, unless any of the following apply:

- (i) State or federal law, rule, regulation, or court order or rule authorizes, permits, or requires that a social security number appear in the document.
- (ii) The document is sent as part of an application or enrollment process initiated by the individual.
- (iii) The document is sent to establish, confirm the status of, service, amend, or terminate an account, contract, policy, or employee or health insurance benefit or to confirm the accuracy of a social security number of an individual who has an account, contract, policy, or employee or health insurance benefit.
- (iv) The document or information is mailed by a public body under any of the following circumstances:
 - (a) The document or information is a public record and is mailed in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246
 - (b) The document or information is a copy of a public record filed or recorded with a county clerk or register of deeds office and is mailed by that office to a person entitled to receive that record.
 - (c) The document or information is a copy of a vital record recorded as provided by law and is mailed to a person entitled to receive that record.
- (v) The document or information is mailed by or at the request of an individual whose social security number appears in the document or information or his or her parent or legal guardian.

(2) Subsection (1) does not apply to any of the following:

(a) A use of all or more than 4 sequential digits of a social security number that is authorized or required by state or federal statute, rule, or regulation, by court order or rule, or pursuant to legal discovery or process.

(3) It is not a violation of subsection (1)(b) or (g) to use all or more than 4 sequential digits of a social security number if the use is any of the following:

(a) An administrative use of all or more than 4 sequential digits of the social security number the ordinary course of business, by a person or a vendor of a person or a vendor or contractor of a person, to do any of the following:

- (i) Verify an individual's identity, identify an individual, or do another similar administrative purpose related to an account, transaction, product, service, or employment or proposed account, transaction, product, service, or employment.
- (ii) Investigate an individual's claim, credit, criminal, or driving history.
- (iii) Detect, prevent, or deter identity theft or another crime

- (iv) Lawfully pursue or enforce a person's legal rights, including, but not limited to, an audit, collection, investigation, or transfer of a tax, employee benefit, debt, claim, receivable, or account or an interest in a receivable or account.
- (v) Lawfully investigate, collect a spousal obligation or tax liability.
- (vi) Provide or administer employee or health insurance or membership benefits, claims, or retirement programs.

(b) A use of all or more than 4 sequential digits of a social security number as a primary account number that meets both of the following;

- (i) The use began before the effective date of this act.
- (ii) The use is ongoing, continuous, and in the ordinary course of business. If the use is stopped for any reason, this subdivision no longer applies.

Section 4. Privacy policy

(1) Effective January 1, 2006, all employees for the City of Muskegon are required to abide by the Social Security Policy.

(a) All information that contains social security numbers must be handled discretely and remain confidential

(b) Prohibits unlawful disclosure of the social security numbers.

(c) Employees will only have access to social security numbers on a need to know basis and if it pertains the ordinary course of business.

(d) All documents that contain social security numbers must be shredded or destroyed in a manner that information is no longer legible.

Section 5. Exemption from disclosure

All or more than 4 sequential digits of a social security number contained in a public record are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to section 13(1)(d) of the freedom of information act, 1976 PA 442, MCL 15.243.

Sec. 6. Violation of Privacy Policy

(1) A person who violates section 3 with knowledge that the person's conduct violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(2) An individual may bring a civil action against a person who violates section 3 and may recover actual damages. If the person knowingly violates section 3, an individual may recover actual damages or \$1,000.00, whichever is greater. If the person knowingly violates section 3, an individual may also recover reasonable attorney fees. Except for good cause, not later than 60 days before filing a civil action, an individual must make a written demand to the person for a violation of section 3 for the amount of his or her actual damages with reasonable documentation of the violation and the actual damages caused by the violation. This subsection does not apply to a person for conduct by an employee or agent of the person in violation of a privacy policy created pursuant to section 4 or in compliance with the fair credit reporting act, 15 USC 1681 to 1681v, or subtitle A of title V of the Gramm-Leach-Bliley act, 15 USC 6801 to 6809, if the person has taken reasonable measures to enforce its policy and to correct and prevent the reoccurrence of any known violations.

XXIV. WATER AND SEWER POLICIES

CHARGES FOR LATE PAYMENTS

Bills not paid by the due date shall be subject to a service charge equal to ten (10%) percent of the billing. In the event a delinquent bill must be spread on the taxes, for the purpose of covering associated administrative costs, an additional service charge equal to twenty (20%) percent with a minimum service charge of \$25.00 and a maximum service charge of \$100.00 of the original delinquent billing amount shall be charged.

ADJUSTMENT OF BILLS FOR MAJOR LEAKS

RESIDENTIAL WATER/SEWER LEAK ADJUSTMENT REGULATIONS

The purpose of these regulations is to promote water conservation by encouraging customers to promptly fix leaks and plumbing problems and to establish guidelines that provide fair and consistent treatment of customers requesting leak adjustments.

TYPES OF ADJUSTMENTS

- 1) Adjustments for leaks where water was discharged into the sanitary sewer system.
- 2) Adjustments for leaks where water was not discharged into the sanitary sewer system.

RULES

No more than one leak adjustment will be allowed in any two year (24 month) period.

No more than two consecutive billing periods will be adjusted.

The request must be made within 30 days of the due date for the period initially involved and must be accompanied by the following:

- A written statement from the customer describing the nature of the problem, the date repairs were completed, and copies of the paid receipts for services and/or supplies (where applicable).
- Current readings (at the time of the request) from both the meter and remote device to be furnished by customer.

Leak adjustments will be based on metered usage experience after repairs are made and will be made only if usage is demonstrably reduced (after adjusting for any extenuating circumstances).

If lost water entered the sanitary sewer system, leak adjustments to the customer's water and sewer billing will equal 25% of the estimated loss for no more than two billing periods.

If the lost water did not enter the sanitary sewer system (i.e. leaks in crawl spaces or into the ground) water charges will be adjusted 25% of the estimated loss for no more than two billing periods and sewer charges will be adjusted to normal usage based on prior year's usage patterns.

If a leak is suspected but cannot be detected by the occupant or owner, additional assistance may be requested from the Water Maintenance Department at no charge to the customer.

SHUTOFF PRACTICES

While the City is authorized to shut off water service for any delinquent bill, the City will normally shut off water or sewer service if the charges to the premises or the meter in question are delinquent in the amount of \$50.00 or more. This amount and practice shall vary, and the threshold amount for shutoff may be changed by the decision of the City Manager, from time to time, to an amount less or more than \$50.00. This decision shall be made by the City Manager based on the administrative and enforcement availability and capability of City personnel, and the cost incurred by the City by using this method of enforcement.

BILLING INITIATION AND SERVICE CHANGES

Because state law dictates that a municipality that provides municipal water and sewer service to a property shall have a lien against the premises, the City requires that the legal property owner sign on for water and/or sewer billing service and sign off for water and/or sewer service. The owner must approve any billing changes by signing an application for service form located at the Treasurer's Office/Water Billing Department. Positive identification is required to be provided.

BILLING CYCLES

For the purpose of reading water meters and billing customers, the city is divided into districts. The meters for each district are read monthly and the customer accounts are also billed each month with bills being due at least 15 days after the billing date.

E-BILLING

City water and sewer customers can sign up to receive their monthly bill in paperless format via the internet. Customers that agree to receive their monthly water and sewer bill via the internet help save paper, printing and postage costs and also receive a credit on their monthly bill.

AUTOMATIC PAYMENT (AUTOPAY)

City water and sewer customers can sign up to automatically pay their water and sewer bill in the Automatic Pay program. Under the Automatic Pay program the customer's water bill payment is automatically deducted from their bank checking account or charged to their credit card account each month when the bill is due. Customers enrolled in the Automatic Pay program receive a credit on their monthly bill.

WATER/SEWER AFFIDAVIT

Property owners who desire, pursuant to MCL123.165, to avoid a tenant's unpaid water/sewer bill from becoming a lien against the real estate, may execute an affidavit and file it with the City of Muskegon Water/Sewer Billing Department, 933 Terrace Street, Muskegon, MI 49440, together with a deposit of an amount which may be established from time to time by the Muskegon City

Commission. A copy of the executed lease agreement must also be provided. The owner is required to use the affidavit form provided by the City. The requirements and contents of the affidavit are as follows:

- 1) The written lease with tenant; said lease must specifically provide that the tenant, not the owner of the property, is directly responsible for all water and sewer bills associated with the unit under lease to that tenant.
- 2) The affidavit must be filled in completely, accurately, signed and notarized. If it is not correctly and completely filled out, signed and notarized, any benefits allowed pursuant to MCL 123.165 will not be available to the property owner.
- 3) If there is more than one property owner or tenant; said affidavit must provide all applicable names. All required data must provide for said affidavit to be valid and enforceable.
- 4) The affidavit must contain the exact date upon which the tenant's written lease terminates. If the lease is extended, the extension must be in writing and the new termination date provided to the City with an affidavit containing the new information.
- 5) The required deposit must be paid at the time of submission of the affidavit to the City.

XXV. POVERTY EXEMPTION INCOME GUIDELINES

The guidelines shall include but not be limited to the specific income and asset levels of the claimant and all persons residing in the residence, ~~including any property tax credit returns filed in the current or immediately preceding year.~~

To be eligible, a person shall do all of the following on an annual basis:

- 1) Be an owner of and occupy as a principal residence the property for which an exemption is requested.
- 2) File a claim with the City Assessor or Board of Review, accompanied by Federal and State Income tax returns for all persons residing in the residence, ~~including any property tax credit returns filed in the immediately preceding year or current year.~~ **or a form 4988, if applicable.**
- 3) Produce a valid driver's license or other form of positive identification if requested.
- 4) Produce a deed, land contract, or other evidence of ownership of the property for which an exemption is requested if requested.
- 5) Meet the Federal poverty income guidelines as defined and determined annually by the United States Office of Management and Budget (or its successor).
- 6) Total household assets, except for the principal residence being claimed, essential household goods, and one motor vehicle, may not exceed one quarter (25%) of the Federal poverty guideline for the entire household. Assets include, but are not limited to real estate, motor vehicles, recreational vehicles and equipment, time shares, certificates of deposit, savings accounts, checking accounts, stocks, bonds, life insurance, retirement funds, antiques and collectibles, etc. Assets do not include basic essential household goods such as furniture, appliances, dishes and clothing. The value of assets will not be reduced by the amount of any indebtedness owed on such assets, or any indebtedness otherwise owed by the applicant or members of the household.
- 7) ~~The applicant must be able to produce evidence as requested that they have owned and occupied the residence for a minimum of two years before tax day of the year in which they seek the exemption.~~

- 8) ~~The State Equalized Value of the property for which the exemption is claimed shall not exceed the mean average for residentially-classed properties in the City of Muskegon for the current tax year.~~

The Board of Review shall follow the above stated policy and Federal guidelines in granting or denying an exemption, unless the Board of Review determines there are substantial and compelling reasons why there should be a deviation from the policy and Federal guidelines and these are communicated in writing to the claimant.

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XXVI. INCOME TAX POLICIES

PAYMENT AGREEMENTS

The City of Muskegon Income Tax Office does accept payment agreements. The terms of the agreement are as follows:

- Twenty five percent (25%) of the total tax due for all years must be paid plus a \$15.00 fee.
- The remaining balance must be paid one year from the inception of the agreement.
- All future tax liabilities must be paid on time. This includes withholding tax payments if required.
- Interest and penalties will continue to accrue until the payment plan is paid in full.
- The City of Muskegon has the right to void this agreement at anytime.

If the taxpayer does not remain current on their payment agreement the City of Muskegon has the right to pursue payment through the court system or a collection agency.

WRITE OFF POLICY

The Income Tax Department may write off income tax liability deemed not collectable due to death or other reason. The Income Tax Administrator is authorized after ten (10) years to review and to write off total tax liability of a taxpayer up to \$15,000. Income Tax liability over \$15,000 requires City Commission approval before a write off can occur.

PROOF OF RESIDENCY

The City of Muskegon Income Tax follows the State of Michigan law to determine residency.

Resident means an individual domiciled in the city. Domicile means a place where a person has true, fixed and permanent home and principle residence.

Michigan law defines principal residence as the one place where a person has his or her true, fixed, and permanent home to which, whenever absent he or she intends to return and that shall continue as a principal residence until another principal residence is established.

In order to verify a person's claim that a particular property is a principal residence, the City of Muskegon will accept various documents that, taken together, to establish that the person or persons is a resident. Examples include drivers license, voter registration card, state identification cards, property tax records, mortgage deeds, rental agreements, income tax records and other documentation. No one of these factors taken alone is controlling over any other factor.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/2019	Title: Equipment Replacement
Submitted By: Joe Buckingham	Department: DPW/Equipment
Brief Summary: The Equipment Division is requesting permission to purchase one (1) Caterpillar Backhoe coming from Michigan CAT, the Mi Deal State Contract holder. This machine will replace one we are trading in.	
Detailed Summary:	
Amount Requested: \$109,290.05 Less trade in of \$20,000.00 for our machine. Final price of \$89,290.05	Amount Budgeted: \$120,000.00
Fund(s) or Account(s): Equipment CIP fund	Fund(s) or Account(s): 661-60932-5720
Recommended Motion: Authorize staff to purchase one Caterpillar backhoe for a final price of \$89,290.05.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	



J A RIGGS TRACTOR

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: Sept. 24, 2019	Title: Development and Reimbursement Agreement, Midtown/Nelson Brownfield
Submitted By: Dave Alexander	Department: Economic Development
Brief Summary: 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	
Detailed Summary: 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 Sept. 10, 2019 meeting.	
Amount Requested: none immediately	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: 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.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

(MIDTOWN SQUARE 2/NELSON NEIGHBORHOOD INFILL HOUSING)

THIS **DEVELOPMENT AND REIMBURSEMENT AGREEMENT** (the "*Agreement*") is made as of _____, 2019, between the **CITY OF MUSKEGON**, a Michigan municipal corporation (the "*City*"), whose address is 933 Terrace Street, Muskegon, Michigan 49440, the **CITY OF MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY**, a Michigan public body corporate (the "*Authority*"), whose address is 933 Terrace Street, Muskegon, Michigan 49440.

Recitals

A. Pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of Michigan of 1996 as amended ("*Act 381*") the Authority adopted a Brownfield Plan Amendment on April 9, 2019 (the "*Brownfield Plan Amendment*") to add 10 scattered proposed residential sites located in City of Muskegon, Michigan which are legally described in the attached Exhibit A (the "*Property*");

B. The Property is included in the Brownfield Plan Amendment as an "eligible property" because it is a "facility" as defined by Part 201 of the Natural Resources and Environmental Protection Act ("*Part 201*"). The City is not a liable party, under Part 201, for remediation of any existing contamination on the Property.

C. The City has and will continue to conduct Eligible Activities (as defined in Act 381) on the Property in order to address environmental and other brownfield conditions, in a collaborative effort to position the Property for redevelopment. Anticipated expenditures by the City to undertake eligible environmental activities on the Property will total approximately \$3 million (the "Total Eligible Brownfield TIF costs"). Activities will include legal expenses to make the property saleable, site preparation for housing, construction of 20 housing units and anticipated sale at less than the cost to remediate. These efforts are aimed at facilitating the redevelopment of the Property as a transformational residential project (the "*Project*").

D. The Project will include performance of baseline environmental assessment activities, due care and other environmental response activities, site preparation activities, construction of infrastructure improvements, Brownfield Plan Amendment and work plan preparation, contingency, interest and other Eligible Activities, all as described in the Brownfield Plan Amendment and eligible for reimbursement under Act 381. To accommodate the lapse in time from when costs of Eligible Activities are incurred to when tax increment revenues become available for reimbursement of those costs, interest at the rate of 5% per annum is also included in the Brownfield Plan Amendment in the estimated total amount of \$302,406.

E. The Eligible Activities will facilitate redevelopment of the Property which will improve the environmental and aesthetic condition of the Property, increase employment within the City, increase tax base within the City, and otherwise enhance the economic vitality, environmental health and quality of life in the City.

F. Act 381 permits the Authority to capture and use the school tax (where applicable) and local property tax revenues (both real and personal property) generated from the incremental increase in property value of a redeveloped brownfield site constituting an “eligible property” under Act 381 to pay or to reimburse the cost of Eligible Activities conducted on the “eligible property” (the “*Brownfield TIF Revenue*”).

G. In accordance with Act 381, the parties desire to establish a procedure for using the available Brownfield TIF Revenue generated from the Property to reimburse the City for completion of Eligible Activities on the Property in amounts not to exceed the Total Eligible Brownfield TIF Costs.

NOW, THEREFORE, the parties agree as follows:

1. City Obligations.

(a) City is the owner of real property located at 235 Monroe, 239 Monroe, 240 Monroe, 250 Monroe, 219 Merrill, 271 Merrill, 1261 Fifth, 391 Houston and 395 Houston (the “Property”). City acquired the Property from the County of Muskegon after the County foreclosed the Property for unpaid taxes. City is unable to obtain title insurance as to 235 Monroe, 239 Monroe, 240 Monroe, 250 Monroe, 219 Merrill, 271 Merrill, 1261 Fifth, 391 Houston and 395 Houston without undertaking a circuit court action to quiet title or clearing any title objections through another means. City has commenced a quiet title action and shall prosecute such to conclusion.

(b) City shall obtain a survey of 235 Monroe, 239 Monroe, 240 Monroe, 250 Monroe, 219 Merrill, 271 Merrill, 1261 Fifth, and 395 Houston. After title issues have been resolved, either by way of recording additional documents or completion of the quiet title action, City shall combine 395 Houston and split 395 Houston into 395 (A) Houston and 395 (B) Houston and combine 271 Merrill and split 271 Merrill into 271 (A) Merrill and 271 (B) Merrill.

(c) City shall amend the City of Muskegon Zoning Ordinance to allow a zero lot line applicable as to parcels 235 Monroe, 239 Monroe, 240 Monroe, 250 Monroe, 219 Merrill, 271 Merrill, 1261 Fifth, and 395 Houston. City may adopt an ordinance to allow zero lot lines applicable to other real property located in the City of Muskegon.

(d) City shall enter into a Capital Improvement Loan in the amount of \$3 million to be used to construct twenty housing units. Fifth Third Bank has provided a Term Sheet dated August 5, 2019 and City staff intends to recommend to the City Commission Fifth Third Bank’s proposed financing. City may, in its sole discretion, elect an alternate financing proposal.

(e) City has selected Dusendang Contractors to construct 20 housing units as part of the MidTown Square 2/Nelson Neighborhood In-Fill Housing project. More specifically, Dusendang shall construct single family residences on 219 Merrill, 271 (A) Merrill, 271 (B) Merrill, 235 Monroe, 239 Monroe, 240 Monroe, 250 Monroe, 271 Merrill, 1261 Fifth, 395 (A) Houston and 395 (B) Houston, and four plexes on 235 Monroe, 239 Monroe, 240 Monroe, and 250 Monroe.

2. Reimbursement Source. During the Term (defined below) of this Agreement, and except as set forth in Paragraph 4 below, the Authority shall reimburse the City for the cost of Eligible Activities conducted on the Property from the Brownfield TIF Revenue collected from the Property in accordance with the Brownfield Plan Amendment. The amount reimbursed to City for the Eligible Activities shall not exceed the lesser of (a) the cost of Eligible Activities incurred by the City plus interest, or (b) the Total Eligible Brownfield TIF Costs plus interest. The Authority shall capture Brownfield TIF Revenue from the Property and reimburse the City for the cost of Eligible Activities incurred by the City until the earlier of the City being fully reimbursed or December 31, 2049. Reimbursement payments shall be made on a semi-annual basis as incremental local and school taxes are captured and available.

3. Capture of Taxes. During the term of this Agreement, the Authority shall capture all Brownfield TIF Revenue from the Property and use those revenues as provided in this Agreement.

4. Reimbursement Process.

(a) The City shall submit to the Authority a "Request for Cost Reimbursement" of Eligible Activities paid for by the City during the term of this Agreement. All costs for the Eligible Activities must be consistent with the approved Brownfield Plan Amendment. The City must include documentation sufficient for the Authority to determine whether the costs incurred were for Eligible Activities, including detailed construction draws or invoices and proof of payment or lien waivers. Copies of all invoices for Eligible Activities must note what Eligible Activities they support.

(b) Within forty-five (45) days after receiving a Request for Cost Reimbursement, the Authority shall pay to the City the amounts for which submissions have been made pursuant to Paragraph 3(a) of this Agreement from which the submission may be wholly or partially paid from available Brownfield TIF Revenue from the Property as described in Paragraph 1. The City shall cooperate with the Authority's review by providing information and documentation to supplement the Request for Cost Reimbursement which may be reasonably requested by the Authority during its review period. If a partial payment is made by the Authority because of insufficient Brownfield TIF Revenue, the Authority shall make additional payments toward the remaining amount within thirty (30) days of its receipt of additional Brownfield TIF Revenue from the Property until all of the amounts for which submissions have been made, have been fully paid to the City or the end of the Term (defined below), whichever occurs first. The Authority is not required to reimburse the City from any other source but may at its sole discretion. If the Authority determines that

the requested costs are deemed ineligible for reimbursement, the Authority shall notify the City in writing of its reasons for rejection within the forty-five (45) day time period for review. The City shall then have forty-five (45) days to provide supplemental information or documents to the Authority demonstrating that the costs are eligible for reimbursement.

(c) All or any portion of any Request for Cost Reimbursement that is not paid within 45 days after receipt by the Authority shall accrue simple interest at the rate of five percent (5%) per annum from the date the Request for Cost Reimbursement is submitted to the Authority for payment until the earlier of the date of full reimbursement, including interest (except as otherwise provided in the last sentence of this subparagraph 3(c)). The Authority shall have no obligation to reimburse the City for Eligible Costs or interest from Brownfield TIF Revenue captured and received by the Authority after December 31, 2035. The payment of interest shall be subject to the following limitations (i) to the extent there is not sufficient Brownfield TIF Revenue captured and collected in a fiscal year and permitted to be used to pay interest accruing in such fiscal year, any unpaid interest shall not be paid, but shall carry over to the next fiscal year, (ii) interest carried over to subsequent fiscal years shall not accrue interest (i.e., no interest on interest), and (iii) interest shall only be payable to the extent permitted by the Michigan Strategic Fund (“MSF”) and/or the Michigan Department of Environmental Quality (“MDEQ”).

(d) The Authority shall send all payments to the City at the address shown above, or by electronic funds transfer directly to the City’s bank account. The City may change the address by providing written notice sent by registered or certified mail to the Authority.

5. Allocation of Base Value and Priority of Reimbursements

(a) The Property is made up of eight taxable parcels with the initial taxable value of the Property as of the date of this Agreement as set forth in the Brownfield Plan Amendment and Exhibit B (“*Base Value*”). Two parcels (395 Houston and 271 Merrill) will be divided into four separate taxable parcels in connection with the development of the Project, the Base Value shall be allocated to each resulting parcel based upon the relative number of square acres of each parcel. The Base Value allocated to a separate undeveloped parcel in this manner shall be the base value of that parcel for purposes of calculating Brownfield TIF Revenue generated by Eligible Activities conducted on that parcel. Brownfield TIF Revenue generated from any separate parcel divided from the Property after the date of this Agreement shall be available for reimbursement of the City’s Administrative Fee and payment of all requests for cost reimbursement submitted by owners of all or any portion of the Property.

(b) Notwithstanding any provision in this Agreement to the contrary, the Authority’s annual TIF Management Administrative Fee, as described in the Brownfield Plan Amendment, shall be paid to the Authority each year to the extent that Brownfield

TIF Revenue has been captured and collected during that year, prior to the payment of any Request for Cost Reimbursement.

6. Term of Agreement. The Authority's reimbursement to the City of the Total Eligible Brownfield TIF Costs under this Agreement shall terminate the earlier of the date when all reimbursements to the City required under this Agreement have been made or December 31, 2049 (the "Term"). If the Term of this Agreement ends before the full reimbursement of all of the City's Total Eligible Brownfield TIF Costs the last reimbursement payment by the Authority shall be the summer and winter tax increment collected during the final year of this Agreement.

7. Adjustments.

(a) If, due to an appeal of any tax assessment or reassessment of any portion of the Property, or for any other reason the Authority is required to reimburse any Brownfield TIF Revenue previously paid to City or any future owner to any tax levying unit of government, the Authority may deduct the amount of any such reimbursement, including interest and penalties, from any amounts due and owing the City. If all amounts due the City under this Agreement have been fully paid or the Authority is no longer obligated to make any further payments to the City, the Authority shall invoice the City for the amount of such reimbursement and the City shall pay the Authority such invoiced amount within forty-five (45) days of the City's receipt of the invoice.

(b) Amounts invoiced and paid to the Authority by the City pursuant to this Section 7 shall be reinstated as Eligible Activities for which the City shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement.

8. Legislative Authorization. This Agreement is governed by and subject to the restrictions set forth in Act 381. If there is legislation enacted in the future that alters or affects the amount of Brownfield TIF Revenue subject to capture, eligible property, or Eligible Activities, then the City's rights and the Authority's obligations under this Agreement shall be modified accordingly as required by law, or by agreement of the parties.

9. Notices. All notices shall be given by registered or certified mail addressed to the parties at their respective addresses as shown above. Any notice to the City and Authority shall be directed to its City Clerk. Any party may change the address by written notice sent by registered or certified mail to the other party.

10. Assignment. This Agreement and the rights and obligations under this Agreement shall not be assigned or otherwise transferred by any party without the consent of the other party, which shall not be unreasonably withheld, *provided, however*, the City may assign its interest in this Agreement to an affiliate without the prior written consent of the Authority, *provided*, any such assignee shall acknowledge to the Authority in writing on or prior to the effective date of such assignment its obligations upon assignment under this Agreement, *provided, further*, that the City may make a collateral assignment of the Brownfield TIF

Revenue for project financing purposes. This Agreement shall be binding upon any successors or permitted assigns of the parties.

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

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

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

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

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

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

17. Electronic Signatures. Executed counterparts of this Agreement delivered by fax or other electronic means shall be considered originals for all purposes.

WHEREFORE, this Agreement has been executed as of the date first written above.

**CITY OF MUSKEGON BROWNFIELD
REDEVELOPMENT AUTHORITY**

By: _____

Martha Bottomley, its: Chairperson

CITY OF MUSKEGON

By: _____

Stephen Gawron, its Mayor

By: _____

Ann Marie Meisch, its Clerk

EXHIBIT A
IDENTIFICATION OF PROPERTY

Exhibit A: Property descriptions

The eligible properties comprising the Nelson Neighborhood Infill Housing Project included in this Plan is approximately 4.29 acres of vacant spread across 28 parcels in the Nelson Neighborhood Muskegon, Michigan. The parcel numbers/legal description of the eligible properties are:

1246 5th St

Parcel #24-205-378-0006-00

CITY OF MUSKEGON REVISED PLAT OF 1903 N 46 FT LOT 6 BLK 378

1252 5th St

Parcel #24-205-378-0006-10

CITY OF MUSKEGON REVISED PLAT OF 1903 NLY 44 FT OF SLY 86 FT LOT 6 BLK 378

1245 5th St

Parcel #24-205-377-0001-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 1 EX SELY 79.5 FT TH'OF & E 1/2 OF LOT 2 EX SELY 79.5 FT TH'OF BLK 377

1261 5th St

Parcel #24-205-377-0011-00

CITY OF MUSKEGON REVISED PLAT OF 1903 N 1/4 LOT 11 & N 1/2 OF N 1/2 LOT 12 BLK 377

1342 6th St

Parcel #24-205-388-0006-20

CITY OF MUSKEGON REVISED PLAT OF 1903 SELY 44 FT OF SWLY 26 FT LOT 5 & SELY 44 FT OF LOT 6 BLK 388

1349 6th St

Parcel #24-205-389-0012-00

CITY OF MUSKEGON REVISED PLAT OF 1903 N 1/2 LOT 12 BLK 389

1352 6th St

Parcel #24-205-388-0007-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 7 BLK 388

1411 6th St

Parcel #24-205-390-0011-20

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 11 BLK 390 EXC W 92 FT TH'OF

1387 7th St

Parcel #24-205-375-0005-00

CITY OF MUSKEGON REVISED PLAT OF 1903 SELY 74 FT LOT 5 & N 30 FT LOT 8 BLK 375

395 Houston Ave

Parcel #205-369-0004-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 4 BLK 369

248 Mason Ave

Parcel #24-205-387-0007-00

CITY OF MUSKEGON REVISED PLAT OF 1903 N 1/2 LOT 7 & W 26.7 FT OF S 1/2 LOT 7 BLK 387

275 Mason Ave

Parcel #24-205-391-0003-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 3 BLK 391

346 Mason Ave

Parcel #24-205-389-0009-00

CITY OF MUSKEGON REVISED PLAT OF 1903 W 30 FT LOT 9 BLK 389

352 Mason Ave

Parcel #24-205-389-0008-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 8 BLK 389

219 Merrill Ave

Parcel # 24-205-386-0012-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 12 BLK 386

271 Merrill Ave

Parcel #24-205-387-0005-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 5 BLK 387

388 Merrill Ave

Parcel #24-205-376-0007-20

CITY OF MUSKEGON REVISED PLAT OF 1903 ELY 66 FT OF WLY 132 FT LOT 7 EXC NLY 20 FT BLK 376

235 Monroe Ave

Parcel #24-205-379-0003-10

CITY OF MUSKEGON REVISED PLAT OF 1903 E 28 FT LOT 3 BLK 379

239 Monroe Ave

Parcel #24-205-379-0003-00

CITY OF MUSKEGON REVISED PLAT OF 1903 BLK 379 W 38 FT LOT 3

240 Monroe Ave

Parcel #24-205-367-0010-00

CITY OF MUSKEGON REVISED PLAT OF 1903 W 1/2 LOT 10 BLK 367

250 Monroe Ave

Parcel #24-205-367-0009-00

CITY OF MUSKEGON REVISED PLAT OF 1903 W 1/2 LOT 9 BLK 367

254 Monroe Ave

Parcel #24-205-367-0008-10

CITY OF MUSKEGON REVISED PLAT OF 1903 E 40 FT LOT 8 BLK 367

398 Monroe Ave

Parcel #24-205-370-0011-10

CITY OF MUSKEGON REVISED PLAT OF 1903 E 27 FT OF LOT 11 BLK 370

1392 Park St

Parcel #24-205-375-0003-20

CITY OF MUSKEGON REVISED PLAT OF 1903 PART LOTS 3-4 & 11 BLK 375 COM ON S LN LOT 11 40 FT
E OF SW COR TH E 84 FT TH NLY 26 FT TH NWLY TO A PT 48.5 FT N OF S LN LOT 11 TH W 62.4 FT TH S
48.5 FT TO BEG

382 W Muskegon Ave

Parcel #24-205-336-0008-00

CITY OF MUSKEGON REVISED PLAT OF 1903 SLY 24.75 FT LOT 9 & NLY 55 FT LOT 8 BLK 336

487 W Muskegon Ave

Parcel #24-205-370-0011-10

CITY OF MUSKEGON REVISED PLAT OF 1903 E 27 FT OF LOT 11 BLK 370

420 Washington Ave

Parcel #24-205-375-0010-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 10 BLK 375

459 Washington Ave

Parcel #24-205-408-0002-00

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 2 & 3 BLK 408

EXHIBIT B

BASE VALUE AS TO EACH PARCEL

Exhibit B: Base value of each parcel

Initial taxable value of all 28 eligible vacant parcels: \$0 (City Owned)



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date:09/24/19	Title: Thermal Imaging Cameras (TIC)
Submitted By: Director Jeffrey Lewis	Department: Fire Department
Brief Summary: 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.	
Detailed Summary:	
Amount Requested: \$13,748.80	Amount Budgeted: \$14,096.00
Fund(s) or Account(s): 101-50336-5720	Fund(s) or Account(s): 101-50336-5720
Recommended Motion: Commission approval for 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.	
For City Clerk Use Only: Commission Action:	

MUSKEGON FIRE DEPARTMENT

OFFICE OF THE DEPUTY DIRECTOR

770 Terrace St
Muskegon, MI 49440
231-724-6942 office
jay.paulson@shorelinecity.com



DATE: July 19, 2019
TO: Director Lewis
FROM: Jay Paulson
RE: Thermal Imaging Cameras (TIC)

I asked Lieutenants Hewartson, Oleniczak and Edmondson to contact several vendors of TIC units to request demonstrations of several makes and models of TIC units. Several vendors provided demonstration models of various TIC units. The Lieutenants found the following to be the best fit for our department:

- Avon 3 Button Thermal Imaging Camera kit to include: Camera, charge station w/ AC/DC power cords, mounting brackets, (2) 3 hour batteries and retractable lanyard. Total cost for two units: \$10,560.00
Also, Avon has a trade-in or "cash for clunkers" program. We have one unit that does not function and we would get a \$500 credit for a final cost of \$10,060.00

The two TIC's will be placed on Engine 23 and 25 as Engine 24 has the newest TIC in service.

Another device the Lieutenants looked at was a personal size TIC unit to be worn by firefighters. The Los Angeles fire department did a field study of the "Seek" TIC unit and found they were very effective and reliable. LAFD purchased 1,000 units for every on-duty firefighter. The affordable Seek units are to augment the Avon TIC units, not to replace them.

- Municipal Emergency Service (MES) has a great special running for a short time where we buy five units at \$614.80 each we will get one free! That is total of \$3,688.80

I have provided the quotes and product information for each unit for your assessment.

The cost for the two Avon TIC units at \$10,060.00 and the six Seek units at \$3,957.50 is a total cost of \$13,748.80

This cost is below the budgeted amount of as \$15,000 as approved by City Commission for the 2019/2020 budget year.

I have attached the completed "Request to Spend" form for your approval.

If you need any further information, please contact me.



Douglass Safety Systems LLC
2655 N. Meridian Rd
Suite #6
Sanford, MI 48657

QUOTATION

36403

Voice: 989-687-7600
Fax: 989-687-7601
Email: info@dougssafe.com

Quote Date: Jul 2, 2019

Quoted To:

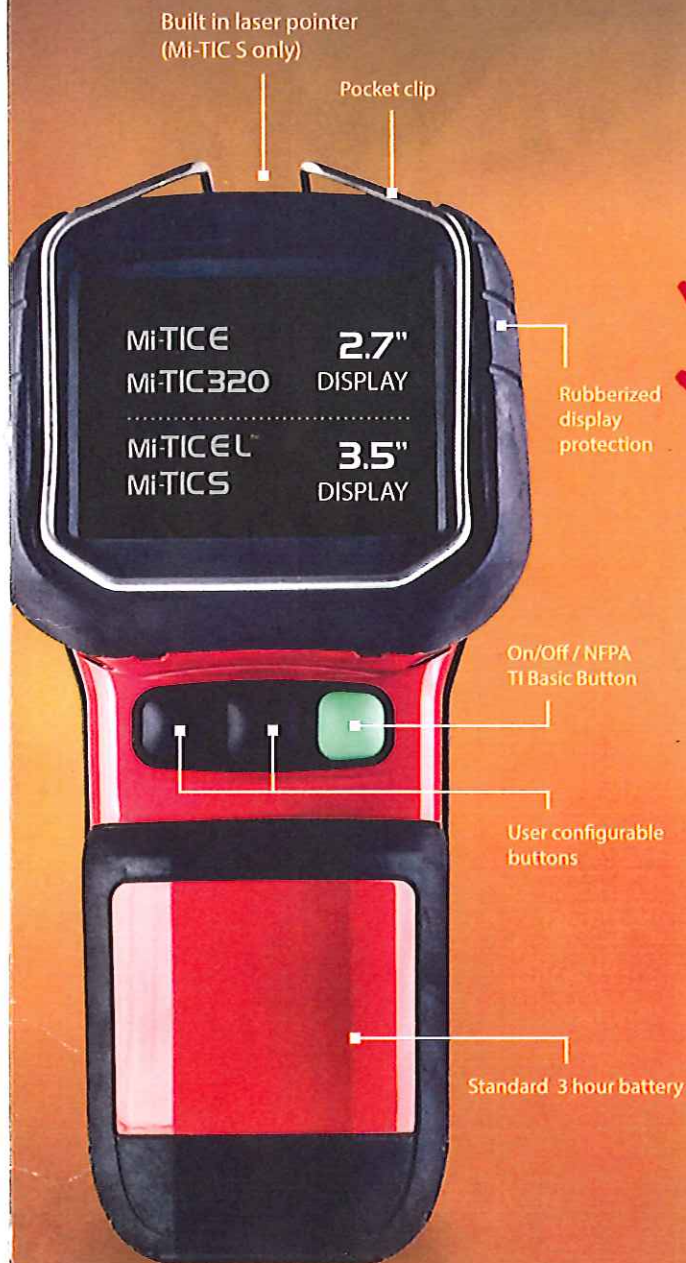
MUSKEGEON FIRE DEPT.
ATTN: CHRIS DRAKE
770 TERRACE STREET
MUSKEGON, MI 49440

Customer ID - M044

Shipping Terms	Good Thru	Payment Terms	Sales Rep
NOT INCLUDED	8/1/19	Net 30 Days	TR002-SR

Quantity	Item	Description	Unit Price	Amount
2.00		#MITIC-S-3 -Avon- 3 Button Thermal Imaging Camera & Kit (Camera, Charge Station w/ AC/DC Power Cords, Mounting Bracket, (2) 3 hr Batteries, Retractable Lanyard)	5,280.00	10,560.00
1.00		Cash for Clunkers - Trade in for old Camera	500.00	-500.00
Subtotal				10,060.00
Sales Tax				
Freight				
TOTAL				10,060.00

Value Driven Fire Attack and Size Up tools for every firefighter. The lightweight and rugged design follows a history of argus thermal imaging and connects value driven customers to high end thermal imaging and NFPA compliance.



Mi-TIC320™

Smallest Full Feature Firefighter Thermal Imaging Camera

Lightweight high end thermal imaging with premium dynamic range and firefighting capabilities.



- User programmable buttons
- The lightest and most affordable NFPA1801:2018 certified thermal imager for firefighters
- Small and wearable at just 26 ounces with a large 2.7" display
- Highest dynamic temperature range: 2,000°F for excellent detail in heavy firefighting applications

Mi-TICS™

Best-in-Class Feature Set Firefighter Thermal Imaging Camera

Premium light weight thermal imaging with industry leading dynamic range and oversized display for top performance in the most extreme firefighting environments. The most versatile thermal imager in the market.



- User programmable buttons
- The lightest and most affordable NFPA1801:2018 certified thermal imager for firefighters
- Small and wearable at just 28 ounces with an oversized 3.5" display
- Highest dynamic temperature range: 2,000°F for excellent detail in heavy firefighting applications
- Laser pointer, compass, heat seeker hottest spot identifier, cold seeker – coldest spot indicator and much more

The Original Hand Held Thermal Imager



STANDARD FEATURES	MI-TIC E	MI-TIC EL	MI-TIC 320	MI-TIC S	APPLICATIONS and Sub application	MI-TIC E	MI-TIC EL	MI-TIC 320	MI-TIC S
320 X 240 Resolution	●	●	●	●	Ventilation location selection	■	■	■	■
Digital spot temperature measurement	●	●	●	●	Search and Rescue (fire and non-fire)	■	■	■	■
Tri-Mode Sensitivity	●	●	●	●	Seat of fire localization	■	■	■	■
Customizable Start-Up Screen	●	●	●	●	Overhaul	□	■	■	■
A retractable lanyard and pocket clip	●	●	●	●	Size Up	□	■	■	■
Black box recording included	●	●	●	●	Interior Structural Firefighting	Fully developed fire (post flashover)	□	■	■
Data transfer software and hardware	○	○	●	●					
Digital video and image capture	○	○	●	●					
Display size (diagonal)	2.7"/69mm	3.5"/90mm	2.7"/69mm	3.5"/90mm					
Dynamic range	1400°F/760°C	1400°F/760°C	2000°F/1100°C	2000°F/1100°C					
Multiple color and fire viewing modes	○	○	●	●	Rapid fire development (pre-flashover)	□	□	■	■
Highest dynamic range			●	●	Burning materials	□	□	■	■
Heat Seeker to locate hottest spot in the scene			●	●	Surrounding materials	□	□	■	■
Cold Seeker to locate coldest spot on the scene			●	●	Room contents	□	□	■	■
Electronic compass for greater scene awareness				●	Seat of fire localization	□	□	■	■
Laser pointer to aid communication				●	Hot Spot localization	□	□	■	■
					Cold Spot Localization	□	□	■	■
					Directional Awareness/Compass				■

Available with three button cameras ○ As Standard ●

Better □ Best ■

Standard Features (1 and 3 button cameras)

Dynamic Scene Enhancement

Dynamic Scene Enhancement (DSE) technology increases the contrast between the fire and important details at lower temperatures such as exit point and obstacles.

Direct Temperature Measurement

Measures the "spot" temperature for quantifying hazards and comparing objects.

Software Customization Tool

Software Customization Tool enables end users to configure the functionality that they desire.

Black Box Recording

Permanently records thermal video when the camera is turned on.

Tri-Mode Sensitivity

Automatically switches to the optimum level of sensitivity to give the lowest amount of noise over the widest possible temperature range.

Customizable Start-Up Screen

Personalize your camera with any image when the camera is turned on.

Software updates

Free periodic software updates available online to enhance performance and add features

Standard Features (3 button cameras only)

Image and Video Capture

Image and video recording for post-operation and training review.

Image and Video Preview

Allows images and video to be previewed on screen.

Image Freeze

Image freeze function to investigate potentially high temperature areas in the fire scene (e.g. loft space) with the shortest possible exposure time.

Application Modes

6 specific application modes for easier image interpretation:

Fire Mode – High dynamic range and imaging for interior structural firefighting.

Overhaul Mode – Easily identify hottest spots identified with red colorization.

Size Up Mode – Easy colorization for size up from outside of the fire scene.

Inspection Mode – Full color scheme for preventative maintenance applications.

White Hot Mode (gray scale only) – White hot for general applications with no heat colorization.

Missing Person Mode – Optimized contrast and blue colorization used to enhance search efforts in non-fire applications (wilderness/ automobile accidents/etc).

Advanced Features

Extended Temperature Range

Extended dynamic temperature range on the MI-TIC 320 and MI-TIC S (1100°C/2000°F) allows firefighters to see detail even in the largest and hottest fires.

Laser

Laser pointer to aid communication.



Electronic Compass

Displays letters to show directional information for faster rescues and improved situational awareness.



Heat Seeker

Identifies and tracks the hottest point in the scene for directing the fire attack.



Cold Seeker

Identifies and tracks the coldest point in the scene e.g. to locate the air-pack of a downed firefighter.



Heat Seeker Feature

Cold Seeker Feature



Fire Mode

Overhaul Mode

Size Up Mode

Inspection Mode

White Hot Mode

Missing Person Mode



SEEK FIREPRO TIC FOR FIREFIGHTERS

\$1,493.64

Used by Fire Services around the world, Ideal for:

- *Rural and Bush Fire Fighters,*
- *Structural Brigades,*
- *Hazmat,*
- *Aviation and*
- *Maritime Fire Fighters*

1

Add to cart

Category: Uncategorized

Description

Description



Seek for Firefighters

thermal

- ◆ US Made with a 2 Year Warranty
- ◆ Affordable 320 x 240 Hi-Resolution
- ◆ Tough IP 67 Form Factor with Torch
- ◆ Used by Fire Services across Australia



Product Description



320 X 240

Thermal Sensor



IP67 Rated

Durable Housing



32° Field of View

Wide Angle

FirePro is not only Smaller than the FLIR K Series But is about 1/5th of the cost . FirePro unit fits in your pocket and offers high resolution 320 x 240 at better than 15 Images per second. All of this and a 300 lumen torch with emergency strobe function.

****Adopted by the LA City Fire Department with 1000 active Firefighters carrying their own Seek FirePro****


ABC7 Eyewitness News

@ABC7

Follow



LAFD adding 1,000 thermal imaging cameras for firefighters to get through smoke-filled rooms, low-visibility situations



LAFD adding thermal imaging cameras for smoke-filled rooms

The Los Angeles Fire Department is adding 1,000 thermal imaging cameras to help firefighters find their way around smoke and low-visibility situations.

abc7.com
<https://twitter.com/ABC7/status/1108956371431485441>

Related products



SEEK Reveal Extended
Range, Fast Frame

\$876.67



SEEK CompactPRO – iPhone
Version

\$932.73



SEEK ShotPro (Hi Res)
Thermal for Electricians &
HVAC



SEEK REVEAL PRO Thermal
Camera

\$1,306.36



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 09/24/2019	Title: Melching – Change Order #005
Submitted By: Leo Evans	Department: Public Works
Brief Summary: 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.	
Detailed Summary: Change Order #005 represents an approximately \$100K 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 projects, 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.	
Amount Requested: \$101,250.00	Amount Budgeted: \$0
Fund(s) or Account(s): 482-91908-5346	Fund(s) or Account(s):
Recommended Motion: Authorize staff to sign Change Order #005 to the demolition contract with Melching Demolition in the amount of \$101,250.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	



Date: August 29, 2019

Invoice/Proposal Number: Change Order No. 5

To: City of Muskegon
Public Works Department
933 Terrace St
Muskegon, MI 49443 – 0536
Attention: Leo Evans

Project: Crushing of Concrete and Asphalt
at West Shoreline Correctional Facility

Phone: (231) 724 - 6920 Fax: _____

Description:

Provide crushing for all Concrete and Asphalt created by the Demolition of the West Shoreline Correctional Facility

Estimated 11,000 tons of Concrete. This material to be crushed to a 21 AA specification

Estimated 4,000 tons of Asphalt. This material will be crushed to Millings

The cost per ton for Crushing either of these materials is \$6.75 / ton

The actual cost will be billed on actual tonnages as measured on the calibrated scale on the Output stacker conveyor

Original Estimated Work Order Amount: (Based on estimated tonnages) \$101,250

Special Notes / Changes:

Actual charges will be based on actual tonnages – total pricing for estimation purposes only

Proposal / Invoice Total: Approximately One Hundred One Thousand Two Hundred Fifty Dollars \$101,250

Authorized By: _____

Submitted By: *Ken Callar*

TERMS: PAYMENT DUE UPON RECEIPT OF INVOICE FOR COMPLETED WORK OR PHASE OF COMPLETED WORK A SERVICE CHARGE OF 1.5% WILL BE ADDED TO PAST DUE ACCOUNTS. FAILURE TO PAY PAST DUE AMOUNTS WILL RESULT IN YOUR BEING LIABLE FOR ALL OF MELCHING INC'S. COLLECTION FEES, ATTORNEY FEES AND/OR COURT COSTS REQUIRED TO COLLECT PAST DUE AMOUNTS AND AS RELATED TO THE CONSTRUCTION LIEN ACT. CHANGES TO THESE TERMS MUST BE IN WRITING.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 09/24/2019	Title: Water Filtration Plant – CE Contract
Submitted By: Leo Evans	Department: Public Works
Brief Summary: 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.	
Detailed Summary: 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/Year to the city.	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: 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.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	



2020 EMERGENCY WITH GENERATOR COMMERCIAL AND INDUSTRIAL DEMAND RESPONSE CUSTOMER AGREEMENT

Customer and Consumers Energy are referred to herein collectively as the "Parties" and each individually as a "Party" to this Agreement.

Effective Date of Agreement: 6/1/20-9/30/20
(Month/Day/Year)

Company:
CONSUMERS ENERGY COMPANY
a Michigan Corporation

Customer:
CITY OF MUSKEGON
(Legal Name)

ONE ENERGY PLAZA
JACKSON MI 49201-2357

1900 BEACH ST
(Street & Number)

1900 BEACH ST MUSKEGON, MI 49441
(City, State & Zip Code)

1. **Initial Term:** Shall commence on June 1, 2020 and shall run through (select one):
 - ☐ **September 30, 2020 (1 year)**
 - ☐ **September 30, 2021 (2 years)**
 - ☐ **September 30, 2022 (3 years)**
 - ☐ **September 30, 2023 (4 years)**
2. This Agreement will become effective on the date identified above and will extend for an Initial Term through the end date identified above. The Customer must notify Consumers Energy Company ("Consumers Energy" or the "Company") by September 1st in the final year of the Initial Term of their desire to renew participation in the Demand Response Program ("Program") through the execution of a new Program Agreement and the amount of reduction/nomination kW for the following Program Period (June 1 through October 1). Customer participation under this Agreement shall be based on the limitations, terms and eligibility as described in the Company's Program and the Company's Electric Rate Book, as approved by the Michigan Public Service Commission. Notice of renewal of participation in the Program by the Customer to the Company shall be made in writing and mailed using the United States Post Office first-class mail. Customer's notice to renew participation in the Program shall be sent to Consumers Energy Company, Attention: Customer Services – DR Program, 165 W Michigan Avenue, Jackson, MI 49201.
3. **Payment Revisions.** The Company will notify each customer enrolled in a multi-year agreement by July 1 of the price for the following Program Period and will submit a contract change order to the customer identifying any necessary changes and requesting signatures of approval. If either the Program's Emergency Capacity Payments or Emergency Event Energy Payments increase by greater than 10% year to year, this Agreement shall automatically terminate and the customer and the Company may reopen negotiations for a new Program Agreement for the following year. If the Parties mutually agree to new annual payment amount(s), the new payment(s) shall become effective June 1 of the following year and continue throughout the Program Period beginning June 1 (i.e. June 1 through September 30). In the event that the Program's Emergency Capacity Payment or Emergency Event Energy Payment increase by less than 10% year over year, the new payment amount(s) shall become effective on June 1 and continue throughout the Program Period beginning June 1 (i.e. June 1 through September 30).
4. **Program Description.** Participants in the Program help reduce peak demand when energy use is the highest and maintain a ready supply of energy for Michigan. Participants will receive an annual Emergency

Capacity Payment for the capacity amount specified in this Agreement within 60 days of the Effective Date of the Agreement.

- 5. Administration Solutions.** Customer agrees to work with Consumers Energy to develop an appropriate energy reduction plan for Customer's business; and (ii) to provide Consumers Energy access and use of contact, billing and energy usage data, and facility information concerning each Site Address (as defined below) ("Customer Data"). Consumers Energy shall manage Customer's curtailable electrical capacity in the Program and upon notification by Consumers Energy and acceptance by Customer, provide real-time support to Customer during demand response events ("Demand Response Events"); and enable data transfer, monitoring and reporting of meter data and provide technical assistance, maintenance, repair and hosting of the System. In addition, as necessary, Consumers Energy will coordinate with Customer to capture kilowatt-hour ("kWh") pulses from Customer's primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.
- 6. System.** Consumers Energy may equip one or more of Customer facility addresses (each address is referred to as a "Site Address") as identified on the Site Address Attachment attached hereto with the System, which includes site devices owned by Consumers Energy that can enable direct load management, power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. There shall be no cost to the Customer associated with the System equipment or installation of the System equipment.
- 7. Customer Support Requirements.**
- a. Representations and Warranties.** Customer holds all applicable licenses and/or permits pursuant to the Agreement that are required for the proper participation in the Program.
 - b. Demand Response Performance.** Customer has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity (as defined below) at each Site Address when notified by Consumers Energy Demand Response Events.
 - c. Acceptance Testing.** At each Site Address where the site devices are installed, Customer agrees to collaborate with Consumers Energy in a timely manner in testing, enabling and maintaining the System.
 - d. Energy Reduction Plan.** Customer must provide to Consumers Energy their Energy Reduction Plan describing the equipment and steps that will be taken to meet their curtailment nomination.
- 8. Program Rules.** The terms of this Agreement reflect the current Program terms and conditions, which may be amended from time to time by Consumers Energy. The current terms are summarized below:

Program Availability	During the Program period of June 1 – September 30, emergency events could be called at any time Monday through Friday between 11 am and 7 pm in response to Midcontinent Independent System Operator, Inc. ("MISO") reliability emergencies ("Emergency Event(s)"). Customer is required to participate in any Emergency Event called by MISO.
Event Frequency and Duration	Emergency Events – Up to five (5) events during the Program Period, each up to four hours each.
Advanced Notification	Emergency Events – Customer will receive at least a thirty (30) minute but no more than a twelve (12) hour notice in advance of an Emergency Event. Customers are advised to estimate load reduction capability over a twelve (12) hour timeframe for planning purposes.

Dispatch Readiness Test	After Customer's Energy Reduction Plan has been reviewed by Consumers Energy and Customer's site installation has been completed, Customer will receive an email from Consumers Energy asking Customer to select a date to participate in a thirty (30) minute Dispatch Readiness Test of Customer's Energy Reduction Plan. The Dispatch Readiness Test is optional to the Customer but recommended by Consumers Energy.
Audit	Consumers Energy may call one (1), one-hour audit ("Audit") per Program Period to confirm Contracted Capacity (as defined below). If called, this audit is required as the Customer's program payment will be determined by performance.
Online Portal	Customer will have access to an online portal "Dashboard" where Customer can monitor their performance during both an Emergency and Economic Event. Portal will be activated before the season starts on June 1 and will remain active until the season concludes on September 30.

9. Customer capacity.

- a. **Contracted Capacity.** For purposes of this Agreement, "Contracted Capacity" shall represent the Customer's performance obligation (in kilowatts ("kW")). The Contracted Capacity shall be based on an analysis of Customer's prior summer consumption data and pre-enrollment load reduction testing.
- b. **Delivered Capacity.** For purposes of this Agreement, an event's "Delivered Capacity" shall be defined as the amount of load in kW reduced for each hour in a Demand Response Event. Delivered Capacity for each event hour is calculated as the difference between the measured energy demand and the baseline energy demand. Consumers Energy will use a MISO-approved baseline calculation method. MISO's default baseline is the Ten Day Baseline. The Ten Day Baseline is calculated as the average hourly demand from the previous ten (10) non-weekend non-holiday non-event days prior to the event. Customer is required to reduce the full amount specified as Contracted Capacity for the hourly average of an emergency event. An alternative baseline may be used, so long as it is pre-approved by MISO.

10. Environmental.

In order for the engine to be considered an emergency stationary engine under 40 CFR Part 60 Subpart IIII, 40 CFR Part 60 Subpart JJJJ and/or 40 CFR Part 63 Subpart ZZZZ any operation other than emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for up to 50 hours per calendar year, as described in the applicable regulation(s), is prohibited. If Customer does not operate the engine according to these requirements, the engine will not be considered an emergency engine and must meet all requirements for non-emergency engines in the applicable regulations.

Emergency Demand Response Events per this contract are considered non-emergency situations (not to exceed 50 hours per calendar year). Power supplied as part of a financial arrangement with Consumers Energy must meet all of the following conditions:

- a. The engine is dispatched by the local balancing authority or local transmission and distribution system operator.
- b. The dispatch is intended to mitigate local transmission and/or distribution limitations so as to avert potential voltage collapse or line overloads that could lead to the interruption of power supply in a local area or region.
- c. The dispatch follows reliability, emergency operation or similar protocols that follow specific NERC, regional, state, public utility commission or local standards or guidelines.
- d. The power is provided only to the facility itself or to support the local transmission and distribution system.

- e. The owner or operator (Customer) identifies and records the entity that dispatches the engine and the specific NERC, regional, state, public utility commission or local standards or guidelines that are being followed for dispatching the engine. The local balancing authority or local transmission and distribution system operator may keep these records on behalf of the engine owner or operator.

11. Payments to Customer.

- a. **Emergency Capacity Payments.** Consumers Energy will pay Customer an Emergency Capacity Payment price of \$25/kW ("Capacity Rate") of Contracted Capacity capped at 120% per Program Period as defined in section 9(b) above for a one (1) year contract; \$26/kW for a two (2) year contract, \$27/kW for a three (3) year contract and \$28/kW for a four (4) year contract. Consumers Energy will pay Customer the Capacity Rate multiplied by the Contracted Capacity. The Capacity Payment will be made within sixty (60) days of the Effective Date of the Agreement by both Parties.
- b. **Emergency Event Energy Payments.** In Program Periods when one or more Emergency Events are called, Consumers Energy will pay Customer an energy payment of \$50/MWh multiplied by the event's Delivered Capacity multiplied by the hours for each such event as defined in section 9(b) above.
- c. **Underperformance.** If Customer fails to deliver their total Contracted Capacity for an Emergency Event ordered by Consumers Energy, as provided for in this Agreement, the following shall occur: (i) Customer shall be assessed the real time commodity price (\$/MWh), as determined by the MISO Midwest Energy Market, for the kW curtailment which was underperformed per event; and (ii) Customer's future Contracted Capacity will be reduced to the amount of load reduced during the Emergency Event for the balance of this Agreement.

12. Payment Timing. After an Emergency Event and Customer's Delivered Capacity has been verified, Consumers Energy shall make Emergency Event Energy Payments for Customer's participation by the issuance of credits to the Customer's bill.

13. Cancellation. Customer may cancel this Agreement any time before December 31, 2019. Cancellation requests must be submitted in writing to: ConsumersEnergy.DemandResponseProgram@cmsenergy.com. If Customer cancels after program equipment has been installed, Customer will incur a cancellation fee of \$300.

14. Confidentiality.

- a. **Nondisclosure to Third Parties.** In performing under the Agreement, each Party to this Agreement will be exposed to certain Confidential Information (as hereinafter defined) of the other Party. Each Party on its own behalf and on behalf of its employees, contractors and agents (collectively, "Representatives") agrees not to, except as required by applicable law or regulation, use or disclose such Confidential Information without the prior written consent of the other Party, either during or after the Term. To protect Confidential Information, each Party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to know"; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein. The term "Confidential Information" means all information which is disclosed, either orally or in written form, by either Party or its Representatives and shall be deemed to include: (w) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by either Party or its Representatives which contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to a receiving Party or its Representatives pursuant hereto; (x) any information concerning the business relationship between the Parties; and (y) Customer Data.
- b. **Exclusions from Confidential Information.** Notwithstanding the obligations in Section 14(a) above, Confidential Information does not include any information that:

- i. is or becomes generally known to the public without breach of any obligation owed to the disclosing Party;
- ii. was known to the receiving Party prior to its disclosure by the disclosing Party without breach of any obligation owed to the disclosing Party;
- iii. is received from a third party without the receiving party having any knowledge of any breach by such third party of any obligation owed to the disclosing Party; or
- iv. was independently developed by the receiving Party without reference to or reliance upon the disclosing Party's Confidential Information.

15. Limitation of Liability. Consumers Energy's and its contractors' and subcontractors' liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages under the Agreement shall not exceed \$100,000 or the total amounts paid to Consumers Energy under the Agreement, whichever is less. In no event shall either Party, its parent, officers, directors, partners, shareholders, employees or affiliates, or any contractor or subcontractor or its employees or affiliates, be liable to the other Party for special, indirect, exemplary, punitive, incidental or consequential damages of any nature whatsoever connected with or resulting from performance or non-performance of obligations under the Agreement, including without limitation, damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability contract, operation of law or otherwise.

16. Additional Terms.

a. Customer also agrees, with respect to Consumers Energy's management of the System, it:

- i. receives a limited, revocable, non-transferrable and non-exclusive right to use and access during the Term the System and shall use the System solely for its internal use subject to the terms of the Agreement and not for the benefit of any third party. Except as expressly permitted in the Agreement, Customer agrees that it shall not receive any right, title or interest in, or any license or right to use or access, the System or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise;
- ii. shall use the System in accordance with all applicable law;
- iii. shall not and shall prohibit causing or permitting, the copying, reverse engineering, disassembly, decompilation or attempting to derive the source code of the System, or other intellectual property of Consumers Energy or creation of any derivative work thereof;
- iv. expressly disclaims any passing of title to the System, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property of Customer;
- v. shall not delete, alter, cover, or distort any copyright or other proprietary notices or trademarks from the System and to use reasonable care to prevent the System and Consumers Energy's intellectual property rights contained in the software from damage and unauthorized use.

b. Miscellaneous. Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of Consumers Energy. The Agreement, including all attachments, constitutes the entire agreement between Customer and Consumers Energy and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. This Agreement shall be binding upon the Parties together with their successors and permitted assigns. Each Party shall be responsible for its Representatives' compliance with the

Agreement. Customer shall promptly notify Consumers Energy in writing of any changes occurring during the Term to the Customer address(es) set forth in this Agreement.

- c. Force Majeure.** The Parties to this Agreement shall be excused from any failure or delay in the performance of their obligations if such obligations are prevented from being fulfilled due to Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure, shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance. A "Force Majeure" shall include any act, event, or occurrence beyond the Party's reasonable control, which the Party, despite its best efforts, is unable to prevent, avoid, overcome, delay or mitigate, including but not limited to: floods, epidemics, earthquakes, quarantine, blockade, war, insurrection or civil strife or terrorism, provided, however, that Force Majeure shall in no event include (i) failure of Subcontractors or Suppliers to deliver services, materials or components or receipt from any Subcontractor or Supplier of defective services, material or components unless same were themselves caused by a Force Majeure Event; (ii) technological impossibility; (iii) a governmental act or failure to act, or order or injunction, caused by any act or failure to act of the Seller or any Subcontractor or Supplier; (iv) strikes or work stoppages; or (v) inclement weather.
- d. Warranty Limitations.** THE SYSTEM (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) AND ALL SERVICES HEREUNDER ARE PROVIDED AS IS BY CONSUMERS ENERGY WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.
- e. Governing Law; Actions; Etc.:** This Agreement shall be deemed a Michigan contract and shall be governed by and interpreted in accordance with the laws of the State of Michigan; excluding any conflicts of laws principles that would result in this Agreement being interpreted in accordance with any different law. Venue for any lawsuit arising out of or in connection with this Agreement shall be exclusively in the courts of the State of Michigan or a Federal court sitting in the State of Michigan. Any legal action against Consumers Energy relating to this Agreement or the breach thereof shall be commenced within one year from the date on which the claimed breach, default or other cause of action arose (and, without limiting the foregoing, in all events not later than one year after the date of completion or other cessation of performance of the work hereunder). This Agreement is intended for the benefit of the parties herein only and does not grant any rights to any third parties unless otherwise specifically stated herein. If Customer defaults in the timely performance of any of its obligations hereunder, then Consumers Energy may, at its option, and in addition to any and all other rights or remedies it may have hereunder or at law or equity, terminate this Contract by written notice to Customer.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the Effective Date.

CONSUMERS ENERGY COMPANY

CITY OF MUSKEGON

(Customer)

By: *JJ Carpenter*
(Signature)

By: _____
(Signature)

 JJ Carpenter
(Print or Type Name)

(Print or Type Name)

 7/23/2019
(Date)

(Date)

SITE ADDRESS ATTACHMENT

SITE ADDRESSES

[illegible]

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/2019	Title: Establish Policy and Application for Block Parties	
Submitted By: LeighAnn Mikesell	Department: Planning	
Brief Summary: 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.		
Detailed Summary: To establish a block party policy, application, and associated fees.		
APPLICATION FEE	\$50*	*Application fee may be refunded if the application is denied by the city. Application fee will not be refunded if event is cancelled by the applicant.
CLEANING FEE If required	\$60/hour**	**Will be charged to the applicant after the event <u>if</u> city property is not returned to its original condition and/or trash is left on city property.
Amount Requested: N/A	Amount Budgeted: N/A	
Fund(s) or Account(s): N/A	Fund(s) or Account(s):	
Recommended Motion: Approve the block party policy, application, and fees as proposed.		
For City Clerk Use Only:		
Commission Action:		

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CITY OF MUSKEGON BLOCK PARTY POLICY

2020

The City of Muskegon has 15 distinct neighborhoods and encourages neighbors to build community. Block party-type events involving the closure of any portion of a city street require a Block Party Permit. While there are several City departments involved in the approval process, this policy centralizes the administration of block party events with the City's Planning Department.



Consumption of alcohol beverages on any public property including streets, terraces, and sidewalks is strictly prohibited.

BLOCK PARTY APPLICATION PROCEDURE

I. Application Submission & Fees

Applications shall be filed with the Planning Department at least thirty (30) days prior to the Block Party date. Applications will be accepted between April 1 and September 30 of each year for block parties to be held in that same calendar year. Block parties will be allowed May 1 through October 31 only. The application fee must be paid at the time the application is submitted.

The Block Party Application fee is \$50.00.

The Application shall be submitted in writing on the appropriate form. **The application fee must be paid at the time of Application submission.** The cleaning fee, if applicable, must be paid within 30 days of the invoice date. The *CITY OF MUSKEGON BLOCK PARTY APPLICATION* form can be found on the City's website at www.muskegon-mi.gov, or you may call 231.724.6702 to have one mailed/e-mailed to you, or visit the Planning Department on the 2nd floor of City Hall, Monday – Friday from 8:30 am. until 5:00 p.m. excluding holidays.

II. Block Party Application Processing

(a) **Application Intake.** Planning Department staff shall be responsible for intake of Block Party Applications and dissemination to appropriate City staff for review and approval. The application fee and signed Block Party Petition must be submitted with the application.

(b) **Approval.** The City will issue an approval or denial no later than 20 days after the application date whenever possible. You will be provided with a signed, approved permit which you should keep available during the block party. Any approval is granted for the date and time specified only. No alternate dates or times are permitted without submitting an additional application and fee.

(c) **Application Denial.** Where City staff reviews an Application and denies same, it shall state in writing the reasons for the denial.

(d) **Unpaid Invoices Due the City.** Any past due fees/invoices owed to the City may result in denial of the application and/or future requests.

III. Event Requirements

All permittees must adhere to the following rules and regulations. Failure to do so may result in the applicant being held responsible for any damages and/or denial of future applications.

(a) **Applicant.** The applicant must reside on the block and is responsible for the event including obtaining and returning barricades, set up and removal of barricades, cleanup of the public right of way, and maintaining a 10-foot wide clear lane for emergency vehicles.

(b) **General Conditions.** The Block Party may take place during *daylight hours only*. No admission fees may be charged. Entertainment must not interfere with neighbors who do not live on

the block. All participants must comply with all local, state, and federal laws, codes, and regulations. No parked or moving vehicles shall be located within the venue during the event. Block Party applications will be considered once per year per block. The city limits Block Parties to five per year per neighborhood.

(c) **Block Party Petitions.** All residents on the block must be contacted before the application is submitted. For multi-unit dwellings/apartments, each unit must be contacted. At least 51% of the residents on the block must be in favor of the party and must complete and sign the "Block Party Petition" form.

(d) **Street Closure.** Block parties may only be held on local streets approved by the City Engineer. Only one block may be closed for one day for each Block Party. The street must be accessible to emergency vehicles and personnel at all times. No block parties will be approved on major streets or bus routes. Approved special events, planned road work, and other factors will be considered when reviewing applications. The applicant must make access arrangements for businesses and residents on the street to be closed, and all sidewalks must remain open for public use. Barricades may be put in place to close streets up to 2 hour(s) prior to start of event, to allow for set-up. The street must be clean, free of equipment, and restored to public access with the barricades removed within one hour of the conclusion of the Block Party.

(e) **Barricades.** City-owned barricades are to be used for all street closures. No other items can be used to block the street. Barricades must be used during daylight hours only, and must be easily removed for access by emergency vehicles. The applicant must pick up and return barricades to the Department of Public Works, 1350 E. Keating Avenue. Costs to replace or repair any damaged barricades will be invoiced to the applicant.

(f) **Damages.** The city reserves the right to charge the applicant for costs relating to damages to city property and/or equipment.

(g) **Inflatables.** Inflatables, tents, and other items requiring staking are strictly prohibited on city property, including the roadway, sidewalks, and terraces (the area between the street and sidewalk).

(h) **Site Clean-up and Trash Disposal.** The Applicant shall be responsible for clean-up of City property after the event. This includes the removal of trash from the site (do not leave full trash cans on site). The City shall have the right to enforce cleanup measures, including but not limited to entry and cleaning of property by City personnel with costs charged to the property owner or event applicant. The fee for clean-up done by city personnel is \$60.00 per hour.

(i) **Noise.** Block Party participants must comply with the city's noise ordinance. Applicants are instructed to be particularly mindful of parties near churches, schools, hospitals, and other properties more sensitive to noise.

(j) **Liability Insurance.** The applicant must provide proof of \$300,000 liability insurance coverage naming the City of Muskegon as an additional insured. You may use an insurance agent of your choice. Please inform your insurance agent that the wording on the certificate must read:

"The City of Muskegon, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof; it is understood and agreed that by naming the City of Muskegon as additional insured, coverage afforded is considered to be primary and any other insurance the City of Muskegon may have in effect shall be considered secondary and/or excess."

An acceptable certificate of insurance must be submitted no later than 10 days before the event date.

(k) **Compliance with all regulations.** Block Party applicants/organizations are responsible to ensure that all applicable laws and ordinances are followed. Failure to comply with all city ordinances, rules and regulations may result in the denial of future block party requests.

BLOCK PARTY – QUICK REFERENCE GUIDE

*** BEFORE ***

1. Review the City's "Block Party Policy".
2. Make sure your proposed location is not on a restricted street (no major streets or bus routes).
3. Contact an insurance agent to obtain a liability insurance policy covering your event.
4. Contact all neighbors on the affected block and obtain the required signatures on the "Block Party Petition"
5. Complete the "Block Party Application".
6. Visit the Planning Department in City Hall (room 202) to submit the application, fee, signed petition, and proof of liability insurance.

You will be notified of application approval or denial within 20 days of application submission

7. Pick up barricades from the Department of Public Works building at 1350 E Keating Ave. between 9:00 AM and 3:00 PM Monday through Friday, excluding holidays. Note that they are not open on Saturday or Sunday!

*** DURING ***

1. Have your signed/approved Block Party Permit available
2. Make sure no vehicles are parked in the block party area
3. Set up barricades at both ends of the block – you may set out barricades up to 2 hours before event start time.
4. Maintain a 10-foot clear lane for emergency vehicles

*** AFTER ***

1. Make sure all trash is picked up and removed from the area
2. Remove street barricades
3. Return barricades to Department of Public Works building

2020 CITY OF MUSKEGON BLOCK PARTY APPLICATION

An application is required for any Block Party using City property. The application and fee must be submitted to the City of Muskegon Planning Department at least 30 days prior to the Block Party.

**Return completed application with payment to the City of Muskegon Planning Department,
P.O. Box 536, 933 Terrace St., Muskegon, MI 49443-0536. Telephone: 231.724.6702**

► BLOCK PARTY FEES

APPLICATION FEE	\$50*	*Application fee may be refunded if the application is denied by the city. Application fee will not be refunded if event is cancelled by the applicant.
CLEANING FEE If required	\$60/hour**	**Will be charged to the applicant after the event <u>if</u> city property is not returned to its original condition and/or trash is left on city property.

► I. BLOCK PARTY SUMMARY

NEIGHBORHOOD	
BLOCK PARTY DATE	<i>Must be between May 1 and October 31</i>
TIME OF BLOCK PARTY	START: END: <i>Start and end times must be during daylight hours</i>
STREET TO BE CLOSED	
BETWEEN WHICH STREETS (limited to one block only)	STREET NAME: STREET NAME:

► II. APPLICANT INFORMATION

APPLICANT / RESPONSIBLE PARTY'S NAME	
APPLICANT ADDRESS	
APPLICANT PHONE NO(s).	
APPLICANT E-MAIL ADDRESS	
CONTACT NAME & PHONE NUMBER DURING EVENT	Representative must be on site and available during event hours

► III. LIABILITY WAIVER

APPLICANT(S) voluntarily agree, understand and recognize that participants will have no right to make a claim or file a lawsuit against the City arising out of the use of City property.

Use of City facilities is at your own risk, with participants exercising his/her own free choice to participate voluntarily in this activity, and participants assume responsibility for any and all such risks and dangers.

► **IV. REQUIREMENTS OF THE BLOCK PARTY PERMIT**

1. Applicant shall comply with all rules and regulations of the City of Muskegon Block Party Policy.
2. Applicant shall comply with all City of Muskegon Ordinances.
3. Applicant shall save the City of Muskegon harmless from all claims.
4. At least 51% of the residents on the block must be in favor of the party and must sign the petition.
5. City property will be left clean and free of litter. Failure of the applicant to satisfactorily clean the site may result in the City cleaning the site and billing the applicant for its services.
6. The City reserves the right to deny changes to the application once final approval is given.
7. Failure to provide any requested information in a timely manner or providing false information may result in denial or revocation of the block party permit.

With my signature, I certify that I have read and agree to the City of Muskegon Block Party Policy and all items listed on this application. I further certify that I have contacted all households and/or businesses on the affected block and have obtained their signatures on the Block Party Petition form which is included with this application.

I agree to abide by all applicable ordinances & regulations.

Signature of Applicant

Date

Thank you for helping us help you make your event safe and successful.

**Block party application submission
checklist:**

- _____ City of Muskegon Block Party Application
- _____ \$50 application fee
- _____ Block Party Petition with neighbor signatures
- _____ Copy of Liability Insurance Policy

CITY STAFF USE ONLY:

Approved by:

Name

Date

Title

City of Muskegon BLOCK PARTY PETITION

APPLICANT'S NAME(S)	
BLOCK PARTY DATE	<i>Must be between May 1 and October 31</i>
TIME OF BLOCK PARTY	START: END: <i>Start and end times must be during daylight hours</i>
STREET TO BE CLOSED	
BETWEEN WHICH STREETS (limited to one block only)	STREET NAME: STREET NAME:

We, the undersigned, have been notified that the applicant(s) listed above is/are organizing a block party to be held on the street I/we live on. By signing this petition, I/we indicate that we are not opposed to the event and understand that that the street listed above will be closed to vehicular traffic during the times of the party shown above.

Printed name & signature of block resident

Address

1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
11. _____	_____
12. _____	_____
13. _____	_____
14. _____	_____

Use back of sheet for additional signatures if necessary.

If you have concerns about the City of Muskegon approving this block party or if you have questions about the block party permitting process, please contact the Planning Department at (231) 724-6702.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/19	Title: Rezoning of 1713 7 th St
Submitted By: Mike Franzak	Department: Planning
Brief Summary: Staff initiated request to rezone the property at 1713 7 th St 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	
Detailed Summary: The Planning Commission unanimously recommended approval at their September meeting.	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the rezoning from I-2, Heavy Industrial to B-4 General Business and MC, Medical Care.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Planning Commission Excerpt:

STAFF REPORT

September 12, 2019

Hearing, Case 2019-23: Staff initiated request to rezone the property at 1713 7th St from I-2, Heavy Industrial to B-4 General Business and MC, Medical Care (northeast corner of property).

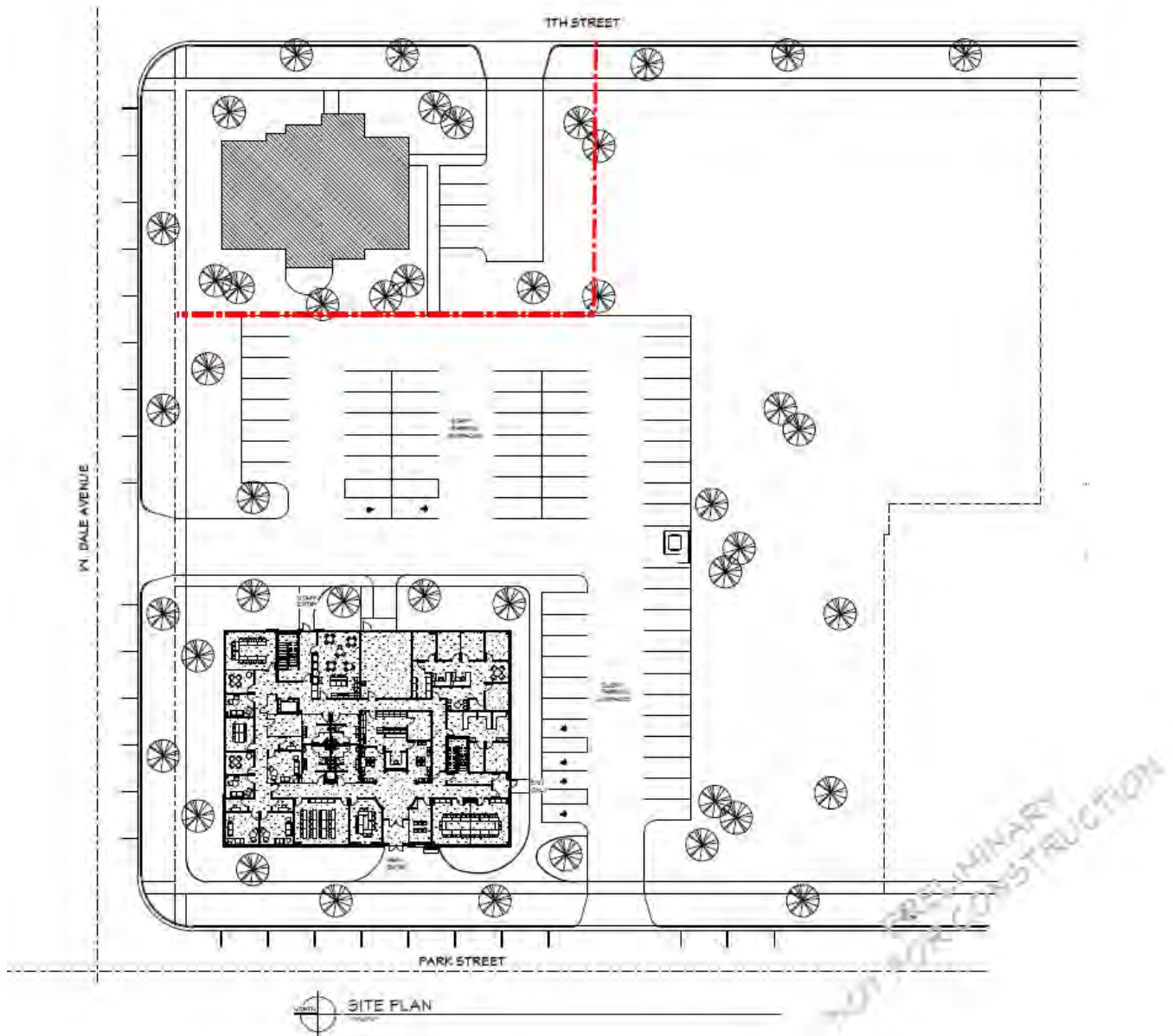
SUMMARY

1. The property measures 2.7 acres and is zoned I-2, General Industrial.
2. Park Street Storage, which was demolished in 2018, was previously located on this site. The City now owns the property.
3. The City has been working with Catholic Charities of West Michigan on a land swap deal that would give this property to them and they would give their current building at the corner of 3rd/Houston to the City. Catholic Charities of West Michigan would use this new property to construct a new office building (in the area zoned B-4) and also a rehab center (in the area zoned MC). The City would work with developers to create a mixed-use development on the corner of 3rd/Houston.
4. 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 a downzoning from heavy industrial to general business is appropriate for the neighborhood.
5. Please see the zoning ordinance excerpts for I-2, B-4 and MC districts.

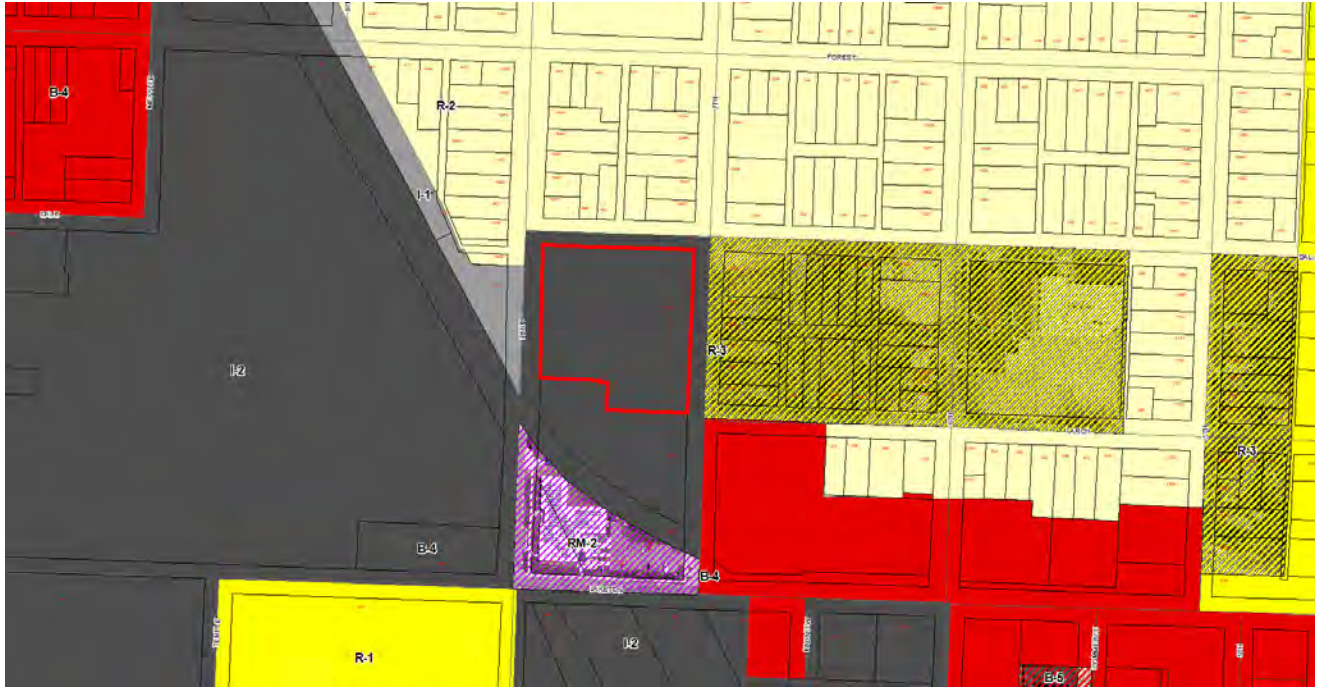
1713 7th St



Depiction of how parcel would be rezoned. Outline near 7th/Dale would be MC, Medical Care. The rest of the parcel would be B-4, General Business.



Zoning Map



Aerial View



CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend the zoning map of the City to provide for a zone change for 1713 7th St from I-2, General Industrial to B-4, General Business and MC, Medical Care.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for 1713 7th St from I-2, General Industrial to B-4, General Business and MC, Medical Care.

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 174345 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

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC
City Clerk

CERTIFICATE (Rezoning 1713 7th St from I-2 to B-4 and MC)

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 amending the zoning map to provide for the change of zoning for 1713 7th St from I-2 to B-4 and MC:

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 174345 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

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

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 24, 2019	Title: Community Relations Committee Recommendations
Submitted By: Ann Marie Meisch	Department: Clerk
Brief Summary: 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.	
Detailed Summary:	
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 appointment.	
For City Clerk Use Only: Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/19	Title: CAPER 2018
Submitted By: Oneata Bailey	Department: Community & Neighborhood Services
Brief Summary: 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.	
Detailed Summary: https://www.muskegon-mi.gov/cresources/CAPER%202019-2020.pdf	
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 close the public hearing and submit the 2018 CAPER including any public comments received during the 20 day comment period ending September 27, 2019.	
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 24, 2019	Title: Royale Glen Partnership
Submitted By: Frank Peterson	Department: City Manager
Brief Summary: The owner of Royale Glen are requesting a five-year term extension and a 3 percentage point reduction in the annual PILOT Payments at Royale Glenn Apartments. In exchange, the ownership group is committing to invest \$600,000 in apartment upgrades/improvements and \$156,000 for improvements at Campbell Field.	
Detailed Summary: 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 current 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 Glenn Apartments. Any costs 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.	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: 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..	
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 24, 2019	Title: Construction Agreement – Clark
Submitted By: Frank Peterson	Department: City Manager
Brief Summary: 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.	
Detailed Summary: 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.	
Amount Requested: \$17,203,211	Amount Budgeted: \$0
Fund(s) or Account(s): Public Improvement	Fund(s) or Account(s):
Recommended Motion: 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.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

AIA[®] Document A133[™] – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the sixth day of August in the year Two Thousand Nineteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Muskegon
933 Terrace
Muskegon, MI 49440

and the Construction Manager:
(Name, legal status and address)

Clark Construction Company
3535 Moores River Drive
Lansing, MI 48911

for the following Project:
(Name and address or location)

Muskegon Convention Center
470 Western Ave.
Muskegon, MI 49440

The Architect:
(Name, legal status and address)

Progressive AE
1811 Four Mile Road NE
Grand Rapids, MI 49525

The Owner's Designated Representative:
(Name, address and other information)

Jeff Salowitz
Construction Simplified
895 West Fulton
Grand Rapids, MI 49504

The Construction Manager's Designated Representative:
(Name, address and other information)

Dan Korte
Clark Construction Company
3535 Moores River Drive
Lansing, MI 48911

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201[™]–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Architect's Designated Representative:
(Name, address and other information)

Jim Horman
Progressive AE
1811 4 Mile Road NE
Grand Rapids, MI 49525

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

It shall be noted that at any location within this document where Architect and/or Owner are referenced, the Owner's Designated Representative, as noted on the front cover, shall have equal or greater authority on the issue(s) as deemed appropriate by the Owner holding this contract and as specified in 3.2.

§ 1.3 General Conditions

For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in a previously executed contract. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If the project schedule indicates that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and on fully operational and delivered facility by 12/31/2020 as defined by the project schedule and milestones in the attached schedule;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The contingency allowance is an uncommitted, mutually agreed upon sum of money allocated with the Guaranteed Maximum Price for the purpose of defraying the expenses due to unforeseen circumstances relating to the Project's construction. The Owner retains expenditure authority over the Construction Manager's contingency allowance.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. If the Guaranteed Maximum Price proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Manager, the Owner and the Architect will discuss and negotiate these recommendations for not more than 30 days. If an acceptable Guaranteed Maximum Price is not agreed upon, the Owner may terminate this Agreement. (see comment to 4.1.1).

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings on a weekly basis to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect within 24 hours.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a weekly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its weekly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. A full change log of expected costs must be maintained and distributed on a weekly basis. Pricing for any and all changes shall be distributed to Ownership with seven (7) days of the change being recognized.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to Construction Phase.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to the Construction Phase.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or

services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 A previously executed contract has been completed for the Construction Manager's Preconstruction Phase services and is included to the extent that the greater of the two contracts will take precedent.

(Paragraphs deleted)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The current project fee is a lump sum fee of \$300,000.00. CM Fee is to be excluded from audit by the Owner.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Changes in the work (as defined in Section 5.3) which are the request of the owner, are not due to the fault of the Construction Manager, and increase the cost for work above the contract value will be marked up two percent (2%) Fee in addition to Bonds, Insurance and applicable General Conditions.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Five percent (5 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. All cost savings for the not-to-exceed value of the Guaranteed Maximum Price shall be returned to the Owner as part of the net aggregate savings established when the final accounting is submitted upon Final Completion of the Work. "Cost Savings" are the net difference obtained by deducting from the Guaranteed Maximum Price, the documented Construction Manager's Fee, the expended portions of the Construction Manager's contingency allowance and the actual expenditures representing the Cost of the Work.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. The Owner may conduct a complete post-construction audit to ascertain the accuracy of all sums invoiced by the Construction Manager for the Work. If any such audit reveals that the Owner has overpaid or paid improperly for any portion of the Work, the Construction Manager will reimburse the Owner for any such overpayment or improper payment. CM Fee is to be excluded from audit by the Owner.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost and all reasonable efforts to forecast, identify, and estimate such costs will be taken and documented in a change log per 2.3.2.8; Owner approval shall be inclusive of, and required for use of all identified contingencies and allowances. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

Init.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1A Applications for Payment are to be submitted to the Owners Designated Representative for full approval. The Owners Designated Representative authority shall supersede the Architect in all instances referenced below in Section 7.

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager, after approval by the Architect and the Owner's Representative, not later the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values less retainage of 10%. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing less retainage of 10%;
- .3 Add the Construction Manager's Fee, less retainage of zero percent (0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 Except with the Owner's prior approval, payment to Subcontractors shall be subject to a retention of not less than 10%. The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.
- .4 the final payment should be due 30 days after the final Architect and Owner's Designated Representative approval.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Employer's Liability Insurance	\$1,000,000 bodily injury by accident per accident
Employer's Liability Insurance	\$1,000,000 bodily injury by disease policy limit
Employer's Liability Insurance	\$1,000,000 bodily injury by disease per employee

Business Automobile Liability Insurance	\$1,000,000 per accident
Commercial General Liability Insurance	\$1,000,000 per occurrence
Commercial General Liability Insurance	\$1,000,000 personal and advertising injury limit
Commercial General Liability Insurance	\$2,000,000 general aggregate
Commercial General Liability Insurance	\$2,000,000 products/completed operations aggregate
Excess Liability Insurance	\$1,000,000

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- ☒ Litigation in a court of competent jurisdiction, but only after unsuccessful attempts at Mediation.
- ☒ Other: Mediation by a qualified and agreed upon 3rd party. *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Owner’s Designated Representative

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

Project Construction Services shall only be applied to Change Orders and shall live for the duration of the project:

POSITION	HOURS	RATE	TOTAL
Project Manager/Superintendent		\$72	
Project Engineer 1		\$51	
Project Intern		\$22	
Safety Manager		\$58	
Purchasing/Accounting		\$53	

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3

(Paragraphs deleted)

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the sixth day of August in the year Two Thousand Nineteen

...

City of Muskegon
933 Terrace
Muskegon, MI 49440

...

Clark Construction Company
3535 Moores River Drive
Lansing, MI 48911

...

Muskegon Convention Center
470 Western Ave.
Muskegon, MI 49440

...

Progressive AE
1811 Four Mile Road NE
Grand Rapids, MI 49525

...

Jeff Salowitz
Construction Simplified
895 West Fulton
Grand Rapids, MI 49504

...

Dan Korte
Clark Construction Company
3535 Moores River Drive
Lansing, MI 48911

PAGE 2

Jim Horman

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User Notes:

(1684881746)

12 SCOPE OF THE AGREEMENT

EXHIBIT A ~~GUARANTEED MAXIMUM PRICE AMENDMENT~~

...

It shall be noted that at any location within this document where Architect and/or Owner are referenced, the Owner's Designated Representative, as noted on the front cover, shall have equal or greater authority on the issue(s) as deemed appropriate by the Owner holding this contract and as specified in 3.2.

~~For the Preconstruction Phase, AIA Document A201™ 2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.~~

PAGE 4

The Construction Manager's Preconstruction Phase responsibilities are set forth in ~~Sections 2.1 and 2.2, a previously executed contract.~~ The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If the project schedule indicates that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

PAGE 5

- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and on fully operational and delivered facility by 12/31/2020 as defined by the project schedule and milestones in the attached schedule;

...

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The contingency allowance is an uncommitted, mutually agreed upon sum of money allocated with the Guaranteed Maximum Price for the purpose of defraying the expenses due to unforeseen circumstances relating to the Project's construction. The Owner retains expenditure authority over the Construction Manager's contingency allowance.

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§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. If the Guaranteed Maximum Price proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Manager, the Owner and the Architect will discuss and negotiate these recommendations for not more than 30 days. If an acceptable Guaranteed Maximum Price is not agreed upon, the Owner may terminate this Agreement. (see comment to 4.1.1).

...

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

PAGE 7

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost-plus~~ cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

...

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings on a weekly basis to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and ~~Architect~~ Architect within 24 hours.

...

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a ~~monthly~~ weekly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its ~~monthly~~ weekly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. A full change log of expected costs must be maintained and distributed on a weekly basis. Pricing for any and all changes shall be distributed to Ownership with seven (7) days of the change being recognized.

...

Section 3.12.10 of A201-2007 shall apply to ~~both the Preconstruction and Construction Phases.~~ Construction Phase.

...

Section 10.3 of A201-2007 shall apply to ~~both the Preconstruction and Construction Phases.~~ the Construction Phase.

...

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, systems sustainability and site requirements.

§ 3.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.~~

PAGE 8

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, B103™-2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.1 ~~For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: A previously executed contract has been completed for the Construction Manager's Preconstruction Phase services and is included to the extent that the greater of the two contracts will take precedent.~~

§ 4.1.2 ~~For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)~~

§ 4.1.3 ~~If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~

§ 4.1.4 ~~Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

§ 4.2 Payments

§ 4.2.1 ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.~~

§ 4.2.2 ~~Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~

—%

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The current project fee is a lump sum fee of \$300,000.00. CM Fee is to be excluded from audit by the Owner.

...

Changes in the work (as defined in Section 5.3) which are the request of the owner, are not due to the fault of the Construction Manager, and increase the cost for work above the contract value will be marked up two percent (2%) Fee in addition to Bonds, Insurance and applicable General Conditions.

...

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Five percent (5%) of the standard rate paid at the place of the Project.

...

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. All cost savings for the not-to-exceed value of the Guaranteed Maximum Price shall be returned to the Owner as part of the net aggregate savings established when the final accounting is submitted upon Final Completion of the Work. "Cost Savings" are the net difference obtained by deducting from the Guaranteed Maximum Price, the documented Construction Manager's Fee, the expended portions of the Construction Manager's contingency allowance and the actual expenditures representing the Cost of the Work.

PAGE 10

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. The Owner may conduct a complete post-construction audit to ascertain the accuracy of all sums invoiced by the Construction Manager for the Work. If any such audit reveals that the Owner has overpaid or paid improperly for any portion of the Work, the Construction Manager will reimburse the Owner for any such overpayment or improper payment. CM Fee is to be excluded from audit by the Owner.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost, and all reasonable efforts to forecast, identify, and estimate such costs will be taken and documented in a change log per 2.3.2.8; Owner approval shall be inclusive of, and required for use of all identified contingencies and allowances. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

PAGE 13

§ 7.1.1A Applications for Payment are to be submitted to the Owners Designated Representative for full approval. The Owners Designated Representative authority shall supersede the Architect in all instances referenced below in Section 7.

...

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the Manager, after approval by the Architect and the Owner's Representative, not later the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (—)Thirty (30) days after the Architect receives the Application for Payment.

PAGE 14

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of ~~values~~ values less retainage of 10%. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in ~~writing~~ writing less retainage of 10%;
- .3 Add the Construction Manager's Fee, less retainage of zero percent (0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Construction Manager self-performs;

...

§ 7.1.8 Expect with the Owner's prior approval, payment to Subcontractors shall be subject to a retention of not less than 10%. The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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- .4 the final payment should be due 30 days after the final Architect and Owner's Designated Representative approval.

...

<u>Employer's Liability Insurance</u>	<u>\$1,000,000 bodily injury by accident per accident</u>
<u>Employer's Liability Insurance</u>	<u>\$1,000,000 bodily injury by disease policy limit</u>
<u>Employer's Liability Insurance</u>	<u>\$1,000,000 bodily injury by disease per employee</u>
 <u>Business Automobile Liability Insurance</u>	 <u>\$1,000,000 pet accident</u>
 <u>Commercial General Liability Insurance</u>	 <u>\$1,000,000 per occurrence</u>
<u>Commercial General Liability Insurance</u>	<u>\$1,000,000 personal and advertising injury limit</u>
<u>Commercial General Liability Insurance</u>	<u>\$2,000,000 general aggregate</u>
<u>Commercial General Liability Insurance</u>	<u>\$2,000,000 products/completed operations aggregate</u>
 <u>Excess Liability Insurance</u>	 <u>\$1,000,000</u>

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- ☒ Litigation in a court of competent ~~jurisdiction~~ jurisdiction, but only after unsuccessful attempts at Mediation.
- ☒ Other: Mediation by a qualified and agreed upon 3rd party. (Specify)

...

Owner's Designated Representative

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Project Construction Services shall only be applied to Change Orders and shall live for the duration of the project:

<u>POSITION</u>	<u>HOURS</u>	<u>RATE</u>	<u>TOTAL</u>
<u>Project Manager/Supintendent</u>		<u>\$72</u>	
<u>Project Engineer 1</u>		<u>\$51</u>	
<u>Project Intern</u>		<u>\$22</u>	
<u>Safety Manager</u>		<u>\$58</u>	
<u>Purchasing/Accounting</u>		<u>\$53</u>	

...

.3 ~~AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:~~

.4 ~~AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~

.5 ~~Other documents:~~

~~(List other documents, if any, forming part of the Agreement.)~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:36:46 ET on 09/12/2019 under Order No. 1733265759 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Muskegon Convention Center
470 Western Avenue
Muskegon, MI 49440

THE OWNER:

(Name, legal status and address)

City of Muskegon
933 Terrace Street
Muskegon, MI 49440

THE ARCHITECT:

(Name, legal status and address)

Progressive AE
1811 4 Mile Road NE
Grand Rapids, MI 49525

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| 15 | CLAIMS AND DISPUTES |

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required

submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop

Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a

party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

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However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

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compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the

Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract

Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in

whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional

insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for ***AIA® Document A201™ – 2007***

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:13:20 ET on 09/12/2019.

PAGE 1

Muskegon Convention Center
470 Western Avenue
Muskegon, MI 49440

...

(Name, legal status and address)
City of Muskegon
933 Terrace Street
Muskegon, MI 49440

...

Progressive AE
1811 4 Mile Road NE
Grand Rapids, MI 49525

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:13:20 ET on 09/12/2019 under Order No. 1733265759 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT A - Clarifications/Assumptions

**Muskegon Convention Center
Basis of Estimate for GMP**

EXHIBIT A

PROJECT SCOPE

1. This document is an outline of the assumptions and clarifications made for this Construction Drawing Set estimate on drawings and specifications from Progressive AE ("PAE") as listed below under the Document List.
2. A Design Development ("DD") estimate was submitted on 2/12/19 for team review based on the PAE Design Development Drawings dated 1/21/19.
 - a. The original DD Estimate included \$18,340,882 in direct estimate construction costs and a total (including Contingency, supervision/GC's/fee/etc.) of \$20,398,218.
 - b. A team VE session was held in April 2019 with the PAE, Construction Simplified ("CS"), and Clark ("CCC") team to propose, estimate, and review potential scope changes and/or reductions. Based upon the items identified on the "190408 CS Tracking Story" summary from the meeting, the team agreed to a scope and design that was estimated as having a total project cost of \$17,219,469. The directive to the design team was for the design progression to include the items agreed to as part of this VE session.
3. Clark issued the following Bid Packages as part of the procurement process:
 - a. Bid Package #1 – Hotel chiller relocation, dated 3/7/19
 - b. Bid Package #2 – Earthwork / Utilities & Hotel Electrical, dated 6/26/19
 - c. Bid Package #3 – Concrete Foundations / Flatwork, Site Concrete, dated 7/8/19
 - d. Bid Package #4 – Balance of Work, dated 8/12/19

DOCUMENT LIST

1. PAE drawings as noted in Exhibit G – List of Documents, attached
2. PAE specifications as noted in Exhibit G – List of Documents, attached

BASIS OF ESTIMATE

1. The following items are included per the Construction Documents or specified allowances
 - a. Stabilization of existing Delta Hotel (formerly Holiday Inn Muskegon) foundations
 - b. Reinforcing of LC Walker Arena roof as shown and as required to support additional snow loading
 - c. Remove and repair roofing as needed for LC Walker Arena
 - d. Selective demolition of items "D01-D18" for LC Walker Arena retrofitting work

Muskegon Convention Center

- e. Snow melt system, piping, manifold, skid, and associated equipment for a complete system
- f. The convention center will have a stand-alone Fire Alarm system and will not have annunciation capabilities to communicate with either the LC Walker Arena or adjacent Delta Hotel (formerly Holiday Inn Muskegon)
- g. Insulated metal wall panels – three (3) colors, repeating pattern
- h. Low Voltage conduit/raceway only (wire/terminations by Owner)

ALLOWANCES

- 1. An allowance of \$200,000 is included for a 3rd Street Entrance into the existing hotel. PAE is to work to design to this budget to be procured by Clark.

CLARIFICATIONS / ASSUMPTIONS

- 1. No costs are included for any LEED requirements or documenting staff for LEED.
- 2. No BIM efforts or processes have been included.
- 3. All sales taxes are currently included, per direction of Owner's Representative
- 4. Clark will ensure that the subcontractors participate in the commissioning-assist process
- 5. Existing sprinkler system water pressure capacity is high enough to meet capacity of design load, based on City of Muskegon calculations provided
- 6. Assumed normal working hours
- 7. Construction cleaning is included prior to turnover to owner. Final building clean by Owner.

EXCLUSIONS

- 1. Exterior and Interior signage (by Owner).
- 2. Jockey pump and/or new fire protection service.
- 3. Containment/hazardous soil removal (by Owner)
- 4. Liquidated damages
- 5. Lightning protection of all existing and new buildings
- 6. Voice system including speakers
- 7. Division 27 Communications
- 8. Low voltage wiring
- 9. Card readers (by Owner)
- 10. Utility consumption costs during construction (by Owner)
- 11. Security cameras, head-end equipment and security cabling (review w/ CS)
- 12. Electrical feeds and fiber feeds for additional service
- 13. Dumpsters for Owner FF&E
- 14. Third party testing or commissioning (except for testing and balancing)

END OF DOCUMENT

EXHIBIT B - GMP Budget Summary



Muskegon Convention Center Exhibit B - GMP Budget Summary

Client: City of Muskegon

Project: New Muskegon Convention Center

Location: Muskegon, MI

Updated: 9/10/2019

Job Number: 2811

By: DK / TW / RC

1	Building and Sitework	Area	Cost	Total
GMP Estimate Summary				
**Estimate Based on the Progressive AE Construction Drawings				
	Bid Pack #1 - Chiller Relocation		\$ 68,840	
	Bid Pack #2 - Site		\$ 1,122,861	
	Bid Pack #3 - Concrete		\$ 1,263,397	
	BC 1 - Soil Stabilization		\$ 333,000	
	BC 4 - Masonry		\$ 690,207	
	BC 5 - Structural Steel		\$ 1,745,000	
	BC 6 - General Trades		\$ 839,532	
	BC 7A - Metal Wall Panels		\$ 999,767	
	BC 7B - EPDM Roofing		\$ 600,920	
	BC 8 - Glass & Glazing		\$ 698,910	
	BC 9A - Metal Studs & Drywall Accoustical		\$ 2,403,350	
	BC 9B - Flooring & Wall Tile		\$ 677,564	
	BC 9C - Painting		\$ 170,000	
	BC 10 - Folding Panel Partitions		\$ 393,300	
	BC 14 - Elevators		\$ 190,500	
	BC 21 - Fire Suppression		\$ 87,170	
	BC 22 - Plumbing		\$ 787,900	
	BC 23 - HVAC		\$ 1,272,000	
	BC 22/23 - Combined Bid Savings		\$ (86,900)	
	ELECTRICAL		\$ 1,052,500	
	ALLOWANCE - 3RD STREET ENTRANCE		\$ 200,000	
	ALLOWANCE - PARKING GARAGE UPGRADING COSTS		\$ 134,000	
	54,689 SF		Subtotal:	\$ 15,643,818
Contingency				
2	Design and Estimating Contingency	0.00%	\$ -	
	Escalation Contingency	0.00%	\$ -	
	Construction Contingency		\$ 400,000	
	Buyout Contingency		TBD	
	Subtotal:			\$ 400,000
Supervision, General Conditions, Bonding, Insurances				
3	General Conditions		\$ 136,840	
	Project Staffing		\$ 469,969	
	Building Permit Cost - added in 4/8/19 VE Mtg		\$ 111,000	
	CM Bond - removed via 4/8/19 VE session, approved by FP		\$ -	
	GLI Insurance (based on total project) 0.60% 17,203,211		\$ 103,219	
	Subcontractor Default Insurance - removed via 4/8/19 VE session, approved by FP		\$ -	
	Subtotal:			\$ 821,028
	Subtotal Construction Cost		Subtotal:	\$ 16,864,846
Construction Fee				
5	Clark Construction Fee		\$ 300,000	
	Preconstruction Services (lump sum)		\$ 38,365	
	Subtotal:			\$ 338,365
	Total Construction Cost		Subtotal:	\$ 17,203,211
6				

Potential VE Items:

		Estimated	Bid	Bid
1	Remove operable partitions (Owner to procure later)		\$ (301,780)	
2	Paint in lieu of interior brick	\$ (86,200)	\$ (215,000)	
3	Ceiling grid and pads in lieu of wood ceiling	\$ (177,330)	\$ (155,000)	
4	Polished concrete in lieu of Terrazzo flooring	\$ (186,375)	\$ (146,650)	
5	Move Generators for Hotel and Convention Center to the Ground	\$ (120,000)	\$ (120,000)	
6	Reduce acoustic baffle ceiling by 1/2	\$ (171,120)	\$ (113,500)	
7	Paint in lieu of fabric wrapped wall panels	\$ (34,450)	\$ (112,850)	
8	Using Carrier as approved manufacturer ILO Trane		\$ (100,000)	
9	Relocate and reuse existing hotel generator.	\$ (90,000)	\$ (90,000)	
10	Paint in lieu of wood veneer wall paneling	\$ (44,200)	\$ (60,000)	
11	Paint in lieu of porcelain wall tiles	\$ (106,674)	\$ (56,340)	
12	Paint in lieu of wall coverings.	\$ (28,340)	\$ (40,000)	
13	Standard carpet in lieu of specified carpet	\$ (41,106)	\$ (34,536)	
	Standard steel stairs with standard railing in lieu of glazed decorative guardrail.	\$ (33,750)	\$ (19,800)	
14	Paint in lieu of high impact wall protection	\$ (22,080)	\$ (14,550)	
15	Standard finish window frame in lieu of custom finish	\$ (32,755)	\$ (9,275)	
16	Standard glass in lieu of custom	\$ (87,514)	\$ -	
17	Dry Fire Suppression System in exterior canopy (add to base bid if req'd)	\$ 25,000	\$ 18,062	
18	Move door 112B to column line 9, leading to MECHANICAL STAIR S3.	\$ (45,000)	TBD	
19	Resizing/relocation of mechanical room		TBD	
20	Add top layer of sound board to roofing system		\$ 25,920	
21	Reduction of parking garage upgrade costs		TBD	
22	Reduction of 3rd St. entrance design		TBD	
23	Use of furring channel ILO z-girt for metal panels			TBD
24	Reduction of glass into top of box into conference space			TBD
25	Alternate supplier for park benches			TBD
26	Flooring VE / Dean List			TBD
27	Substitute operable partition fabric		\$ (50,200)	
28	Remove subdivided operable partitions			TBD
29	Use Moderco for operable partitions ILO base bid		\$ (91,520)	TBD
30				

\$ (1,687,019)

Potential GMP Total Including Potential VE Items

Subtotal:

\$ 15,516,193

Items currently in the GMP Budget that were not included in original \$17.2M program

	Estimated
Site electric (DD budget = \$25k, final bid = \$273,845)	\$ 248,845
Added / additional generator for Hotel (per Safe-Built requirements)	TBD
Steel retrofits for LC Walker	\$ 22,500
Steel retrofits for hotel	\$ 14,820
Selective demo for Delta Hotel steel retrofits	TBD
Original Option #4 Combined Entry (budget: \$562,954, current estimate: \$996,912)	\$ 433,958
Post Bid Addendum 1 - concrete changes only	\$ 124,326
Post Bid Addendum 1 - TBD (civil, per 8/30/19 PAE discovery)	TBD
Snow melt system	\$ 154,940
Hotel dumpster enclosure	\$ 33,330
Parking Garage Upgrading Costs	\$ 134,000
Site stabilization (\$333,000 low bid) vs. jet grouting 4' only (\$50,000)	\$ 283,000

\$ 1,449,719

EXHIBIT C - Contingency

Muskegon Convention Center Project

Clark Construction Co.

Exhibit C – Construction Contingency Definition and Use

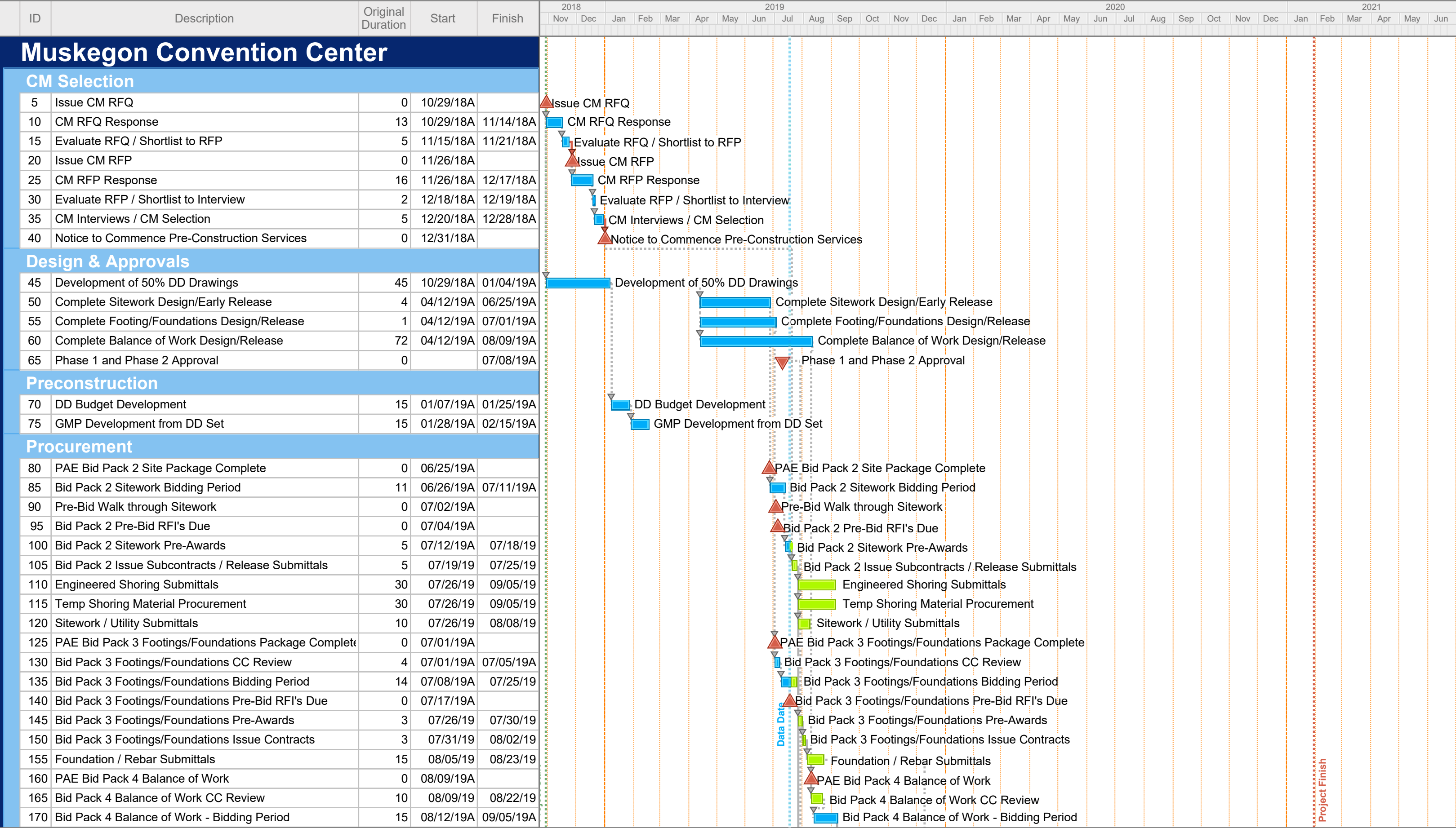
September 10, 2019

The GMP shall include a contingency (hereinafter the “Contingency”) in an amount as defined in Exhibit B – GMP project budget (exclusive of insurance, and bonding). Subject to the exceptions set forth in this Exhibit C, the Contingency shall be available for Construction Manager’s use with Owner’s prior written approval, for planned reimbursement of costs and expenses: (1) reasonably incurred by the Construction Manager in performing the Work; (2) of a type that are reimbursable under this Agreement as a Cost of the Work; and (3) that are not otherwise the basis for Change Order; including, by way of example, but not limited to: (a) Work items inadvertently omitted during the estimating and bidding process (which were reasonably inferable from the Contract Documents) by the Construction Manager, provided Subcontractor items of work inadvertently omitted in their proposal are not to be reimbursed; (b) schedule recovery costs associated with weather and other causes of delay that are not otherwise compensable and not the result of actions or lack of action by the Construction Manager; (c) cost increases due to unanticipated local labor and material conditions; (d) interfacing omissions between and from the various categories of work; (e) additional costs incurred due to the withdrawal or disqualification of a Subcontractor bid forming basis for the Guaranteed Maximum Price prior to execution of a written Subcontract; and (f) additional costs incurred as a result of the failure of a Subcontractor to perform corrective work.

No sums may be charged to the Contingency except with prior written approval of Owner, and then only to the extent that such costs have or will be incurred by Construction Manager. Not more than five percent (5%) of the Contingency shall be available for General Conditions Costs in excess of the base contract General Conditions. Notwithstanding anything to the contrary, no sums may be charged to the Contingency for costs which arise out of Construction Manager’s (or its Subcontractors) intentional misconduct, gross negligence or a material breach of this Agreement or the executed subcontractor agreements. Construction Manager shall not be entitled to payment of sums from the Contingency to the extent: (i) such sums may be properly chargeable to a Subcontractor or other responsible person or entity directly against the Subcontractor, or (ii) Construction Manager failed to notify Owner or its insurance carrier, if applicable, of the event which results in the claim to the Contingency in a timely fashion. Any Contingency remaining as of Final Completion shall revert back to Owner.

EXHIBIT D - Milestone Schedule





Start Date: 10/29/18 Finish Date: 01/29/21 Data Date: 07/18/19 Run Date: 09/10/19 Exhibit D - Milestone Schedule.ppx Page 3A	City of Muskegon / County of Muskegon Muskegon Convention Center 09.10.19 GMP Exhibit D		
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EXHIBIT E - List of Documents

EXHIBIT E

SECTION 000115
LIST OF DRAWING SHEETS

1. LIST OF DRAWINGS PREPARED BY PROGRESSIVE AE

<u>SHEET NO.</u>	<u>TITLE</u>	
	<u>GENERAL</u>	
TD001	TITLE DRAWING	8/21/19
G001	ABBREVIATIONS, SYMBOLOGY, ACCESSIBILITY	8/9/19
G100	LOWER LEVEL CODE COMPLIANCE PLAN	8/9/19
G101	MAIN LEVEL CODE COMPLIANCE PLAN	8/9/19
	<u>CIVIL</u>	
C101	TOPOGRAPHIC SURVEY	7/9/19
C102	DEMOLITION PLAN	8/21/19
C201	SITE LAYOUT PLAN	8/21/19
C301	SITE GRADING AND STORMWATER PLAN	8/21/19
C302	SOIL EROSION PLAN	7/3/19
C401	SITE UTILITY PLAN	8/21/19
C402	PUBLIC UTILITY PROFILE	7/30/19
C501	SITE DETAIL SHEET	7/3/19
L101	SITE LANDSCAPE PLAN	8/21/19
IR101	SITE IRRIGATION PLAN	8/9/19
	<u>STRUCTURAL</u>	
S001	GENERAL NOTES	7/3/19
S002	DESIGN CRITERIA AND SCHEDULES	8/21/19
S003	SPECIAL INSPECTIONS	7/3/19
S004	FOUNDATION LOADS AND UNDERPINNING PLAN	8/13/19
S100A	FOUNDATION PLAN – PART A	7/3/19
S100B	FOUNDATION PLAN – PART B	8/13/19
S101A	MAIN LEVEL FRAMING PLAN – PART A	8/13/19
S101B	MAIN LEVEL FRAMING PLAN – PART B	8/21/19
S102A	LOW ROOF FRAMING PLAN - PART A	8/21/19
S102B	LOW ROOF FRAMING PLAN - PART B	8/21/19
S103	HIGH ROOF FRAMING PLAN	8/21/19
S201	ELEVATIONS	8/21/19
S202	ELEVATIONS	8/21/19
S203	ELEVATIONS AND TRUSS PROFILES	8/21/19
S301	CONCRETE DETAILS	8/13/19
S302	CONCRETE DETAILS	8/13/19
S303	CONCRETE DETAILS	8/13/19
S304	CONCRETE DETAILS	8/13/19
S305	CONCRETE DETAILS	8/13/19
S306	CONCRETE DETAILS	8/13/19
S401	MASONRY DETAILS	8/9/19
S402	MASONRY DETAILS	8/9/19
S501	STEEL DETAILS	8/9/19
S502	STEEL DETAILS	8/9/19
S503	STEEL DETAILS	8/21/19
S504	STEEL DETAILS	8/21/19
S505	STEEL DETAILS	8/21/19
S506	STEEL DETAILS	8/9/19

EXHIBIT E

SECTION 000115
LIST OF DRAWING SHEETS

	<u>ARCHITECTURAL</u>	
AD100	LOWER LEVEL DEMOLITION PLAN	8/9/19
AD101	MAIN LEVEL DEMOLITION PLAN	8/9/19
A100A	LOWER LEVEL FLOOR PLAN - PART A	8/9/19
A100B	LOWER LEVEL FLOOR PLAN - PART B	8/9/19
A101A	MAIN LEVEL FLOOR PLAN - PART A	8/9/19
A101B	MAIN LEVEL FLOOR PLAN - PART B	8/21/19
A103	ROOF PLAN	8/21/19
A110A	A LOWER LEVEL REFLECTED CEILING PLAN - PART A	8/21/19
A110B	LOWER LEVEL REFLECTED CEILING PLAN - PART B	8/9/19
A111A	MAIN LEVEL REFLECTED CEILING PLAN - PART A	8/21/19
A111B	MAIN LEVEL REFLECTED CEILING PLAN - PART B	8/9/19
A120A	LOWER LEVEL FINISH PLAN - PART A	8/9/19
A120B	LOWER LEVEL FINISH PLAN - PART B	8/9/19
A121A	MAIN LEVEL FINISH PLAN - PART A	8/21/19
A121B	MAIN LEVEL FINISH PLAN - PART B	8/21/19
A201	EXTERIOR ELEVATIONS	8/9/19
A202	EXTERIOR ELEVATIONS	8/9/19
A301	BUILDING SECTIONS	8/9/19
A302	BUILDING SECTIONS	8/9/19
A311	WALL SECTIONS	8/9/19
A312	WALL SECTIONS	8/9/19
A313	WALL SECTIONS	8/9/19
A314	WALL SECTIONS	8/9/19
A321	EXTERIOR DETAILS	8/9/19
A322	EXTERIOR DETAILS	8/9/19
A323	EXTERIOR DETAILS	8/9/19
A324	EXTERIOR DETAILS	8/9/19
A401	ENLARGED FLOOR PLANS AND ELEVATIONS	8/9/19
A402	ENLARGED FINISH FLOOR PLANS	8/9/19
A501	INTERIOR ELEVATIONS	8/9/19
A502	INTERIOR ELEVATIONS	8/9/19
A503	INTERIOR ELEVATIONS	8/9/19
A504	INTERIOR ELEVATIONS	8/9/19
A505	INTERIOR ELEVATIONS	8/9/19
A511	INTERIOR DETAILS	8/9/19
A512	INTERIOR DETAILS	8/9/19
A601	DOOR AND WINDOW SCHEDULES	8/9/19
A602	FINISH MATERIAL LIST AND DETAILS	8/21/19
A801	VERTICAL CIRCULATION	8/9/19
A802	VERTICAL CIRCULATION	8/9/19
	<u>FIRE PROTECTION</u>	
FP100A	LOWER LEVEL FIRE PROTECTION PLAN - PART A	8/9/19
FP100B	LOWER LEVEL FIRE PROTECTION PLAN - PART B	8/9/19
FP101A	MAIN LEVEL FIRE PROTECTION PLAN - PART A	8/21/19
FP101B	MAIN LEVEL FIRE PROTECTION PLAN - PART B	8/9/19
	<u>PLUMBING</u>	
P001	GENERAL PLUMBING INFORMATION	8/21/19
PUF100A	UNDERFLOOR PLUMBING PLAN - PART A	8/21/19

EXHIBIT E

SECTION 000115

LIST OF DRAWING SHEETS

PUF100B	UNDERFLOOR PLUMBING PLAN - PART B	8/21/19
P100A	LOWER LEVEL PLUMBING PLAN - PART A	8/21/19
P100B	LOWER LEVEL PLUMBING PLAN - PART B	8/21/19
P101A	MAIN LEVEL PLUMBING PLAN - PART A	8/21/19
P101B	MAIN LEVEL PLUMBING PLAN - PART B	8/21/19
	<u>MECHANICAL</u>	
M001	GENERAL MECHANICAL INFORMATION	8/9/19
MH100A	LOWER LEVEL HVAC PLAN - PART A	8/9/19
MH100B	LOWER LEVEL HVAC PLAN - PART B	8/9/19
MH101A	MAIN LEVEL HVAC PLAN - PART A	8/21/19
MH101B	MAIN LEVEL HVAC PLAN - PART B	8/21/19
MH103	ROOF MECHANICAL PLAN	8/9/19
MP100A	LOWER LEVEL HYDRONIC PLAN - PART A	8/21/19
MP100B	LOWER LEVEL HYDRONIC PLAN - PART B	8/9/19
MP101A	MAIN LEVEL HYDRONIC PLAN - PART A	8/9/19
MP101B	MAIN LEVEL HYDRONIC PLAN - PART B	8/9/19
M301	ENLARGED MECHANICAL PLANS	8/21/19
M601	MECHANICAL SCHEDULES	8/26/19
	<u>ELECTRICAL</u>	
ED100	SITE ELECTRICAL DEMOLITION PLAN	8/21/19
ES100	SITE ELECTRICAL PLAN	8/21/19
E001	ELECTRICAL NOTES AND ABBREVIATIONS	8/9/19
EP100A	LOWER LEVEL POWER AND SYSTEMS PLAN - PART A	8/28/19
EP100B	LOWER LEVEL POWER AND SYSTEMS PLAN - PART B	8/28/19
EP101A	MAIN LEVEL POWER AND SYSTEMS PLAN - PART A	8/21/19
EP101B	MAIN LEVEL POWER AND SYSTEMS PLAN - PART B	8/28/19
EP102	ROOF POWER AND SYSTEMS PLAN	8/28/19
EL100A	LOWER LEVEL LIGHTING PLAN - PART A	8/9/19
EL100B	LOWER LEVEL LIGHTING PLAN - PART B	8/9/19
EL101A	MAIN LEVEL LIGHTING PLAN - PART A	8/9/19
EL101B	MAIN LEVEL LIGHTING PLAN - PART B	8/9/19
E501	ELECTRICAL RISER DIAGRAM	8/21/19
E502	ELECTRICAL DETAILS	8/21/19
E601	ELECTRICAL SCHEDULES	8/9/19
E602	LOW VOLTAGE LIGHTING ZONE SCHEDULE	8/9/19
E603	AV ONE LINE DIAGRAM	8/28/19
E604	ELECTRICAL SCHEDULES	8/28/19

END OF SECTION

EXHIBIT E
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00 0102	PROJECT INFORMATION	8/9/19
00 0115	LIST OF DRAWING SHEETS	8/9/19
00 3100	AVAILABLE PROJECT INFORMATION	8/9/19
00 4325	SUBSTITUTION REQUEST FORM - DURING PROCUREMENT	8/9/19
00 5433	DIGITAL/ELECTRONIC MEDIA DATA PROTOCOL - USE AGREEMENT	8/9/19
00 5433.01	DIGITAL/ELECTRONIC MEDIA DATA PROTOCOL EXHIBIT	8/9/19
00 6313	REQUEST FOR INTERPRETATION FORM	8/9/19
00 6325	SUBSTITUTION REQUEST FORM - DURING CONSTRUCTION	8/9/19

DIVISION 01 - GENERAL REQUIREMENTS

01 1000	SUMMARY	8/9/19
01 2500	SUBSTITUTION PROCEDURES	8/9/19
01 3000	ADMINISTRATIVE REQUIREMENTS	8/9/19
01 4000	QUALITY REQUIREMENTS	8/9/19
01 4533	CODE-REQUIRED SPECIAL INSPECTIONS	8/9/19
01 5713	TEMPORARY EROSION AND SEDIMENT CONTROL	8/9/19
01 6000	PRODUCT REQUIREMENTS	8/9/19
01 7000	EXECUTION AND CLOSEOUT REQUIREMENTS	8/9/19
01 7800	CLOSEOUT SUBMITTALS	8/9/19

DIVISION 02 - EXISTING CONDITIONS

02 4100	DEMOLITION	8/9/19
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DIVISION 03 - CONCRETE

03 1000	CONCRETE FORMING AND ACCESSORIES	8/9/19
03 2000	CONCRETE REINFORCING	8/9/19
03 3000	CAST-IN-PLACE CONCRETE	8/9/19

DIVISION 04 - MASONRY

04 0511	MORTAR AND MASONRY GROUT	8/9/19
04 2000	UNIT MASONRY	8/9/19
04 2616	ADHERED MASONRY VENEER	8/26/19

DIVISION 05 - METALS

05 1200	STRUCTURAL STEEL FRAMING	8/9/19
05 2100	STEEL JOIST FRAMING	8/9/19
05 3100	STEEL DECKING	8/9/19
05 4000	COLD-FORMED METAL FRAMING	8/9/19
05 5000	METAL FABRICATIONS	8/9/19
05 5100	METAL STAIRS	8/9/19
05 5213	PIPE AND TUBE RAILINGS	8/9/19

EXHIBIT E

05 5305	METAL GRATINGS AND FLOOR PLATES	8/9/19
05 7000	DECORATIVE METAL	8/9/19
05 7313	GLAZED DECORATIVE METAL RAILINGS	8/9/19

DIVISION 06 - WOODS, PLASTICS, AND COMPOSITES

06 1000	ROUGH CARPENTRY	8/9/19
06 4100	ARCHITECTURAL WOOD CASEWORK	8/9/19
06 8316	FIBERGLASS REINFORCED PANELING	8/9/19

DIVISION 07 - THERMAL AND MOISTURE PROTECTION

07 0150.19	PREPARATION FOR RE-ROOFING	8/9/19
07 1300	SHEET WATERPROOFING	8/9/19
07 2100	THERMAL INSULATION	8/9/19
07 2119	FOAMED-IN-PLACE INSULATION	8/21/19
07 2500	WEATHER BARRIERS	8/9/19
07 4213	METAL WALL PANELS	8/9/19
07 4213.19	INSULATED METAL WALL PANELS	8/9/19
07 4213.23	METAL COMPOSITE MATERIAL WALL PANELS	8/9/19
07 4214	METAL WINDOW PANELS	8/9/19
07 5200	MODIFIED BITUMINOUS MEMBRANE ROOFING	8/9/19
07 5300	ELASTOMERIC MEMBRANE ROOFING	8/9/19
07 6200	SHEET METAL FLASHING AND TRIM	8/9/19
07 7100	ROOF SPECIALTIES	8/9/19
07 7200	ROOF ACCESSORIES	8/9/19
07 7711	COMPOSITE FRAMING SUPPORT (CFS) SYSTEM	8/9/19
07 8100	APPLIED FIREPROOFING	8/9/19
07 8123	INTUMESCENT FIREPROOFING	8/9/19
07 8400	FIRESTOPPING	8/9/19
07 9100	PREFORMED JOINT SEALS	8/9/19
07 9200	JOINT SEALANTS	8/9/19
07 9513	EXPANSION JOINT COVER ASSEMBLIES	8/9/19

DIVISION 08 - OPENINGS

08 1113	HOLLOW METAL DOORS AND FRAMES	8/9/19
08 1116	ALUMINUM DOORS AND FRAMES (INSULATED CORE)	8/9/19
08 1416	FLUSH WOOD DOORS	8/9/19
08 3100	ACCESS DOORS AND PANELS	8/9/19
08 3323	OVERHEAD COILING DOORS	8/9/19
08 3613	SECTIONAL DOORS	8/9/19
08 4313	ALUMINUM-FRAMED STOREFRONTS	8/9/19
08 4413	GLAZED ALUMINUM CURTAIN WALLS	8/9/19
08 5619	ALUMINUM SLIDING PASS WINDOW	8/9/19
08 7100	DOOR HARDWARE	8/9/19
08 800 0	GLAZING	8/9/19

DIVISION 09 - FINISHES

09 2116	GYPSUM BOARD ASSEMBLIES	8/9/19
09 3000	TILING	8/9/19
09 5100	ACOUSTICAL CEILINGS	8/9/19
09 5424	WOOD CEILINGS AND WALLS	8/21/19

EXHIBIT E

09 6500	RESILIENT FLOORING	8/9/19
09 6813	TILE CARPETING	8/9/19
09 7200	WALL COVERINGS	8/9/19
09 8400	ACOUSTICAL BLADES	8/9/19
09 8430	SOUND-ABSORBING WALL AND CEILING UNITS	8/9/19
09 9123	INTERIOR PAINTING	8/9/19

DIVISION 10 - SPECIALTIES

10 1400	SIGNAGE	8/9/19
10 2113.17	PHENOLIC TOILET COMPARTMENTS	8/21/19
10 2210	SIDE-FOLDING CLOSURES	8/9/19
10 2239	FOLDING PANEL PARTITIONS	8/9/19
10 2600	WALL PROTECTION	8/9/19
10 2800	TOILET ACCESSORIES	8/9/19
10 4400	FIRE PROTECTION SPECIALTIES	8/9/19
10 5113	METAL LOCKERS	8/21/19

DIVISION 11 - EQUIPMENT

11 1313	LOADING DOCK BUMPERS	8/9/19
11 1316	LOADING DOCK SEALS AND SHELTERS	8/9/19
11 1319.13	LOADING DOCK LEVELERS	8/9/19
11 1321	LOADING DOCK SAFETY EQUIPMENT	8/9/19
11 5213	PROJECTION SCREENS	8/9/19

DIVISION 12 - FURNISHINGS

12 2400	WINDOW SHADES	8/9/19
12 3600	COUNTERTOPS	8/9/19
12 4813	ENTRANCE FLOOR MATS AND FRAMES	8/9/19

DIVISION 14 - CONVEYING EQUIPMENT

14 2100	ELECTRIC TRACTION ELEVATORS	DIVISION 21 - FIRE SUPPRESSION	8/9/19
21 0500	COMMON WORK RESULTS FOR FIRE SUPPRESSION		8/9/19
21 0523	GENERAL-DUTY VALVES FOR WATER-BASED FIRE-SUPPRESSION PIPING		8/9/19
21 0553	IDENTIFICATION FOR FIRE SUPPRESSION PIPING AND EQUIPMENT		8/9/19
21 1200	FIRE-SUPPRESSION STANDPIPES		8/9/19
21 1300	FIRE-SUPPRESSION SPRINKLER SYSTEMS		8/9/19

DIVISION 22 - PLUMBING

22 0516	EXPANSION FITTINGS AND LOOPS FOR PLUMBING PIPING	8/9/19
22 0519	METERS AND GAUGES FOR PLUMBING PIPING	8/9/19
22 0523	GENERAL-DUTY VALVES FOR PLUMBING PIPING	8/9/19
22 0553	IDENTIFICATION FOR PLUMBING PIPING AND EQUIPMENT	8/9/19
22 0719	PLUMBING PIPING INSULATION	8/9/19
22 1005	PLUMBING PIPING	8/9/19
22 1006	PLUMBING PIPING SPECIALTIES	8/9/19
22 3000	PLUMBING EQUIPMENT	8/9/19
22 4000	PLUMBING FIXTURES	8/26/19

EXHIBIT E

DIVISION 23 HEATING, VENTILATING, AND AIR-CONDITIONING (HVAC)

23 0516	EXPANSION FITTINGS AND LOOPS FOR HVAC PIPING	8/9/19
23 0517	SLEEVES AND SLEEVE SEALS FOR HVAC PIPING	8/9/19
23 0519	METERS AND GAUGES FOR HVAC PIPING	8/9/19
23 0523	GENERAL-DUTY VALVES FOR HVAC PIPING	8/9/19
23 0553	IDENTIFICATION FOR HVAC PIPING AND EQUIPMENT	8/9/19
23 0593	TESTING, ADJUSTING, AND BALANCING FOR HVAC	8/9/19
23 0713	DUCT INSULATION	8/9/19
23 0719	HVAC PIPING INSULATION	8/9/19
23 0800	COMMISSIONING OF HVAC	8/9/19
23 0913	INSTRUMENTATION AND CONTROL DEVICES FOR HVAC	8/9/19
23 0923	DIRECT-DIGITAL CONTROL SYSTEM FOR HVAC	8/9/19
23 0993	SEQUENCE OF OPERATIONS FOR HVAC CONTROLS	8/9/19
23 2113	HYDRONIC PIPING	8/9/19
23 2113.13	HYDRONIC SNOWMELT PIPING	8/9/19
23 2114	HYDRONIC SPECIALTIES	8/9/19
23 2123	HYDRONIC PUMPS	8/9/19
23 2500	HVAC WATER TREATMENT	8/9/19
23 3100	HVAC DUCTS AND CASINGS	8/9/19
23 3300	AIR DUCT ACCESSORIES	8/9/19
23 3423	HVAC POWER VENTILATORS	8/9/19
23 3600	AIR TERMINAL UNITS	8/9/19
23 3700	AIR OUTLETS AND INLETS	8/9/19
23 5100	BREECHINGS, CHIMNEYS, AND STACKS	8/9/19
23 5216	CONDENSING BOILERS	8/9/19
23 5700	HEAT EXCHANGERS FOR HVAC	8/9/19
23 7413	PACKAGED OUTDOOR CENTRAL-STATION AIR-HANDLING UNITS	8/9/19
23 8126.13	SMALL-CAPACITY SPLIT-SYSTEM AIR CONDITIONERS	8/9/19
23 8200	CONVECTION HEATING AND COOLING UNITS	8/9/19

DIVISION 26 - ELECTRICAL

26 0519	LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES	8/9/19
26 0526	GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS	8/9/19
26 0529	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS	8/28/19
26 0533.13	CONDUIT FOR ELECTRICAL SYSTEMS	8/9/19
26 0533.16	BOXES FOR ELECTRICAL SYSTEMS	8/9/19
26 0533.23	SURFACE RACEWAYS FOR ELECTRICAL SYSTEMS	8/9/19
26 0536	CABLE TRAYS FOR ELECTRICAL SYSTEMS	8/9/19
26 0548	VIBRATION AND SEISMIC CONTROLS FOR ELECTRICAL SYSTEMS	8/9/19
26 0553	IDENTIFICATION FOR ELECTRICAL SYSTEMS	8/9/19
26 0573.15	ARC FLASH HAZARD	8/9/19
26 0583	WIRING CONNECTIONS	8/9/19
26 0801	ELECTRICAL INSPECTION, TESTING AND START-UP	8/9/19
26 0923	LIGHTING CONTROL DEVICES	8/21/19
26 1316	MEDIUM-VOLTAGE FUSIBLE INTERRUPTER SWITCHES	8/21/19
26 2200	LOW-VOLTAGE TRANSFORMERS	8/9/19
26 2413	SWITCHBOARDS	8/9/19
26 2416	PANELBOARDS	8/9/19
26 2716	CABINETS AND ENCLOSURES	8/9/19
26 2726	WIRING DEVICES	8/9/19
26 2816.16	ENCLOSED SWITCHES	8/9/19

EXHIBIT E

26 2923	VARIABLE-FREQUENCY MOTOR CONTROLLERS	8/9/19
26 3213	ENGINE GENERATORS	8/28/19
26 3600	TRANSFER SWITCHES	8/9/19
26 5100	INTERIOR LIGHTING	8/9/19
26 5600	EXTERIOR LIGHTING	8/9/19

DIVISION 27 - COMMUNICATIONS

27 0500	COMMON WORK RESULTS FOR COMMUNICATIONS	8/9/19
27 0526	GROUNDING AND BONDING FOR COMMUNICATION SYSTEMS	8/9/19
27 1000	STRUCTURED CABLING SYSTEMS	8/9/19
27 1005	STRUCTURED CABLING FOR VOICE AND DATA	8/9/19
27 1100	COMMUNICATIONS EQUIPMENT ROOM FITTINGS	8/9/19
27 4100	AUDIO VIDEO SYSTEMS	8/9/19

DIVISION 28 - ELECTRONIC SAFETY AND SECURITY

28 1000	ACCESS CONTROL	8/9/19
28 2000	VIDEO SURVEILLANCE	8/9/19
28 4600	FIRE DETECTION AND ALARM	8/9/19

DIVISION 31 - EARTHWORK

31 1000	SITE CLEARING	8/9/19
31 2200	GRADING	8/9/19
31 2316	EXCAVATION	8/9/19
31 2319	DEWATERING	8/9/19
31 2323	FILL	8/9/19
31 4000	SHORING AND UNDERPINNING	8/9/19
31 5000	EXCAVATION SUPPORT AND PROTECTION	8/9/19
31 6615	HELICAL FOUNDATIONS PILES	8/9/19

DIVISION 32 - EXTERIOR IMPROVEMENTS

32 1123	AGGREGATE BASE COURSES	8/9/19
32 1216	ASPHALT PAVING	8/9/19
32 1313	CONCRETE PAVING	8/9/19
32 1723.13	PAINTED PAVEMENT MARKINGS	8/9/19
32 1726	TACTILE WARNING SURFACING	8/9/19
32 3300	SITE FURNISHINGS	8/9/19
32 8400	UNDERGROUND IRRIGATION SYSTEM	8/9/19
32 9219	SEEDING	8/9/19
32 9300	PLANTS	8/9/19

DIVISION 33 - UTILITIES

33 0110.58	DISINFECTION OF WATER UTILITY PIPING SYSTEMS	8/9/19
33 0513	MANHOLES AND STRUCTURES	8/9/19
33 1416	SITE WATER UTILITY DISTRIBUTION PIPING	8/9/19
33 3113	SITE SANITARY SEWERAGE GRAVITY PIPING	8/9/19
33 4100	SUBDRAINAGE	8/9/19
33 4211	STORMWATER GRAVITY PIPING	8/9/19
33 7119	ELECTRICAL UNDERGROUND DUCTS, DUCTBANKS, AND MANHOLES	8/9/19

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/19	Title: DDA On-Premise Liquor License for the LC Walker Arena
Submitted By: Mike Franzak	Department: Planning
Brief Summary: 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.	
Detailed Summary: This license would cover all alcohol sales within the arena; including Rad Dad's, Carlisle's and concessions.	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the DDA On-Premise Liquor License for the L.C. Walker Arena and authorize the Mayor and Clerk to sign the resolution.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN**

RESOLUTION NO. _____

A resolution concerning the issuance of a Downtown Development Authority District On-Premises Liquor License pursuant to 436.1521a(1)(b) of the Michigan Compiled Laws.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

1. The City of Muskegon has applied for a Downtown Development Authority District On-Premises Liquor License for the premises at 470 W Western Ave, which is located within an area established by the City Commission as a redevelopment project area pursuant to 436.1521a(1)(b) of the Michigan Compiled Laws.
2. It is required that the City Commission approve a specific applicant, at a specific location “ABOVE ALL OTHERS”.
3. This resolution was approved at the regular meeting of the City Commission on September 24, 2019.

City Commission Findings

The City Commission is satisfied that:

1. That the applicant has sufficiently demonstrated a commitment for a capital investment of not less than \$75,000 for the build-out and improvements of the building that will house the licensed premises, which amounts shall be expended before the issuance of the license.
2. That the licensed business shall be engaged in dining, entertainment or recreation, that is open to the general public, with a seating capacity of not less than 50 persons.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

The City Commission deems it to be in the best interest of the City of Muskegon to approve the application of the City of Muskegon for a Downtown Development Authority District On-Premises Liquor License for the premises at 470 W Western Ave, pursuant to 436.1521a(1)(b) of the Michigan Compiled Laws, and recommends to the Michigan Liquor Control Commission the issuance of said requested license “ABOVE ALL OTHERS”.

Adopted this 24th day of September, 2019.

AYES: _____

NAYES: _____

ABSENT:

By:

Stephen J. Gawron
Its Mayor

By:

Ann Meisch, MMC
Its Clerk

EXHIBIT A

CITY OF MUSKEGON

DEVELOPMENT DISTRICT AREA – PUBLIC/PRIVATE INVESTMENT

PRIVATE INVESTMENT (REAL PROPERTY):

PARCEL#	PROJECT	YEAR	ADDRESS	VALUE
24-205-313-0007-00	Muskegon Community College	2016	388 W. Clay Avenue	\$ 12,000,000
24-205-328-0001-00	Berkshire Muskegon LDH	2017	275 W. Clay Avenue	\$ 9,000,000
24-234-000-0001-00	Highpoint Flats Apartments	2017	285 W. Western Ave	\$ 6,500,000
24-431-000-0000-00	Heritage Square Townhomes	2017	W. Clay Avenue	\$ 2,500,000
24-792-000-0001-00	Terrace Plaza Penthouses	2017	316 Morris Avenue	\$ 2,000,000
24-205-558-0005-00	Terrace Point Offices	2017	700 Terrace Point	\$ 500,000
24-233-000-0006-00	18 th Amendment Distillery	2016	350 W. Western Ave	\$ 300,000
TOTAL				\$32,800,000

PRIVATE INVESTMENT (PERSONAL PROPERTY):

PARCEL#	PROJECT	YEAR	ADDRESS	VALUE
24-900-251-4931-00	Pigeon Hill Brewing Company	2015	500 W. Western Ave	\$ 300,000
24-900-251-0005-00	18 th Amendment Distillery	2017	350 W. Western Ave	\$ 200,000
24-900-251-3254-00	KLO Outdoors	2017	700 Terrace Point	\$ 100,000
TOTAL				\$ 600,000

PUBLIC INVESTMENT:

PARCEL#	PROJECT	YEAR	ADDRESS	VALUE
24-234-000-0006-00	Muskegon Farmer's Market	2014	771 Terrace Street	\$ 3,200,000
24-205-564-0003-00	Muskegon Area Transit System	2014	365 Morris Avenue	\$ 2,500,000
TOTAL				\$5,700,000

GRAND TOTAL: \$39,100,000

Affidavit of Public and Private Investment

I, Dan Vanderkooi, in my capacity as Deputy Assessor for the City of Muskegon, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440, being duly sworn, depose and say:

THAT I am familiar with and make this affidavit with regard to public and private investment in real and personal property within the qualified Downtown Development Authority in the City of Muskegon established pursuant to Ordinance No. 969 ("DDA District"); and

THAT, upon information and belief, attached Exhibit A reflects actual public and private investment in real and personal property within the DDA District during the period beginning January 1, 2013 through December 31, 2017; and

THAT the foregoing is true to the best of my knowledge and belief.

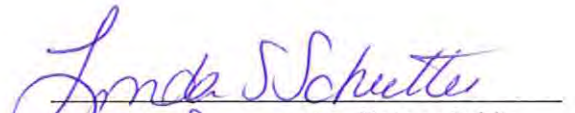
Dated this 1st day of October, 2018



Dan Vanderkooi, Deputy City Assessor
For the City of Muskegon, Michigan

STATE OF MICHIGAN
COUNTY OF MUSKEGON

Signed and sworn before me in Muskegon County, Michigan on October 1, 2018,
by Dan Vanderkooi, Deputy Assessor for the City of Muskegon, a municipal corporation.



LINDA S. SCHUTTE Notary Public
Acting in the County of Muskegon
Muskegon County, Michigan
My Commission Expires: 04-28-20

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 9/24/19	Title: Recreational Marihuana Regulatory Ordinance
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-_____ MMFLA 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 MMFLA 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-___ MMFLA 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: 9/24/19	Title: Amendment to the Medical Marihuana Facilities Overlay District to also allow Recreational Marihuana facilities
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 2331: ~~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 pm.

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: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 24th day of September, 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

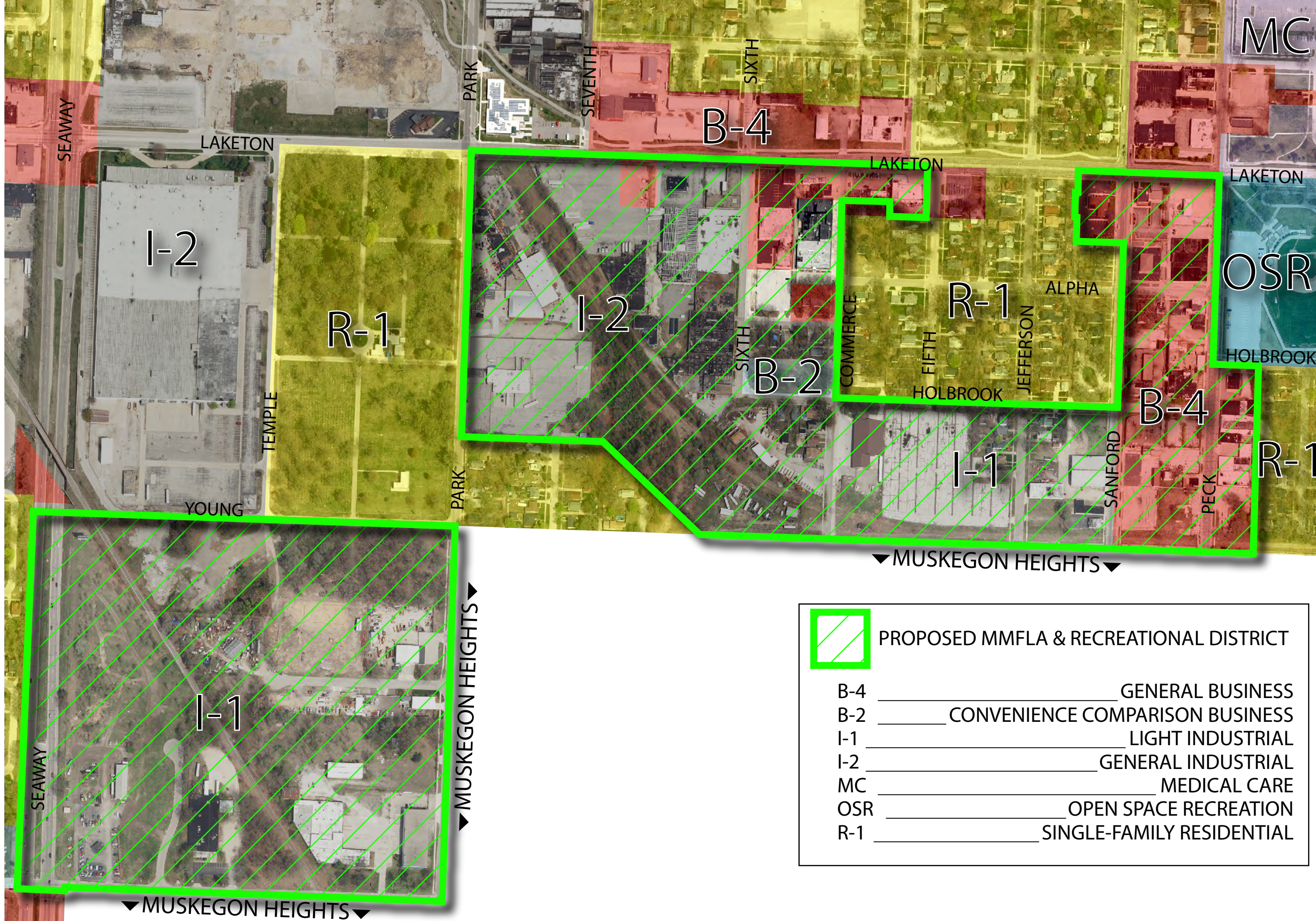
By _____

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