

CITY OF MUSKEGON

CITY COMMISSION MEETING

SEPTEMBER 13, 2022 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS, AWARDS, AND PRESENTATIONS:**
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **CONSENT AGENDA:**
 - A. **Approval of Minutes** City Clerk
 - B. **Flag Policy** City Clerk
 - C. **General Fund Transfers for FY2021-22** Finance
 - D. **PowerMIFleet Enrollment** Public Works
 - E. **Shoreline Drive Engineering Amendment** Public Works
 - F. **Wastewater Committee** Public Works
 - G. **Shoreline Drive Traffic Control** Public Works
 - H. **MDEGLE Grant Agreement** Public Works
 - I. **Back Hoe Purchase** DPW/Equipment
 - J. **Rezoning of 2043, 2051, 2065, and 2075 Dowd to From Based Code, Urban Residential** Planning
 - K. **US Army Corps of Engineers Lease** City Manager
 - L. **Juneteenth Holiday** City Manager
 - M. **Email Migration to the Cloud with Enhanced Security, Backup, and User Training** Information Technology
 - N. **District Library Board Appointment** City Clerk
- ☐ **PUBLIC HEARINGS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. Adelaide Pointe Cooperative Use Agreement City Manager

B. Designation of Voting Delegates for the Michigan Municipal League Annual Meeting City Commission

☐ **ANY OTHER BUSINESS:**

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

- ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
- ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
- ▶ Submit the form to the City Clerk.
- ▶ Be recognized by the Chair.
- ▶ Step forward to the microphone.
- ▶ State name and address.
- ▶ Limit of 3 minutes to address the Commission.
- ▶ (Speaker representing a group may be allowed 10 minutes if previously registered with City Clerk.)

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

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

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13, 2022	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the August 8, 2022 Worksession and the August 9, 2022 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, August 8, 2022
5:30 p.m.
City Commission Chambers
933 Terrace Street, Muskegon, MI 49440

MINUTES

2022-72

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

Absent: Commissioners Hood and Ramsey

Farmers Market Presentation

Ann Meisch, City Clerk, presented information about the Muskegon Farmer's Market. The presentation included information about staffing, advantages of the Muskegon Farmers Market, Seasonal and Daily vendors, multiple programs like SNAP/EBT – Senior POP, Kids POP, Flea Market, Winter Market, Event Rentals, City Events, Kitchen 242, Challenges at the Market, and future goals. The presentation will be made available on the City's website.

Update on City's ARPA Allocation

Peter Wills, Director of Strategic Initiatives, provided a staff update on the City's allocation of American Rescue Plan Act (ARPA) funds.

Staff previously provided an update to the Commission on the use of ARPA funds at a Special Meeting on February 28, 2022. Since that time, staff continues to meet to strategize on the use and implementation of the ARPA funds to realize the highest long term gain for our community. Staff is also targeting and evaluating federal grant opportunities that continue to be released throughout the year as part of the Infrastructure Investment and Jobs Act (IIJA) implementation process.

Staff intends to provide a review of the funding allocations and commitments made thus far. We will also work with the Commission to develop options for handling the remaining funds and engaging with our neighbors.

Periodic engagement also continues with the National League of Cities (NLC) as part of our participation in their ARPA Grant Navigator program to explore additional opportunities for federal funding.

Table 1.

Status of Committed ARPA Funds			
Project	Purpose	Committed	Status
Infill Housing – West Urban Properties	Infill Housing	\$4.275M	Sub-recipient Agreement signed
Infill Housing – LRS Enterprises	Infill Housing	\$750,000	Current staff consultation with LRS
Infill Housing – Community enCompass	Infill Housing	\$250,000	Full Award expended
General Fund	GF FY22 contribution	\$900,000	Budgeted
General Fund	GF FY23 contribution	\$650,000	Budgeted
Water/Sewer	Houston Ave project	\$800,000	Budgeted
Trinity Health Arena/Thayer Ave	Restrooms, ADA improvements, etc	\$750,000	Budgeted
Trinity Health Arena	FY22 Budget	\$675,000	Budgeted
Convention Center	Outstanding project expenses	\$2.5M	Budgeted
CSXT Purchase Agreement	Removal of rail line	\$2.0M	\$185,480.54 expended per Agreement
Boys & Girls Club	Fundraising campaign contribution	\$1.0M	Full Award expended
Muskegon Museum of Art	Fundraising campaign contribution	\$1.0M	Full Award expended
Frauenthal Center	Utility relocation expenses	\$1.0M	Full Award expended
	Subtotal	\$16,550,000	
	ARPA Balance	\$6,331,894	

- 23% - percentage of funding currently committed to infill housing initiative
- 13% - percentage of funding currently committed to local non-profit agencies

Table 2. - projects included within the permitted Standard Allowance “umbrella” intended to replace up to \$10M of lost public sector revenue.

Commitment of Funds to replace lost public sector revenue, up to \$10M (Standard Allowance)	
Infill Housing	\$5.275M
Convention Center	\$2.5M
General Fund FY22	\$900,000
General Fund FY23	\$650,000
Trinity Health Arena FY22	<u>\$675,000</u>
Total	\$10,000,000

Parks Donation Policy

Staff has prepared the draft policy to administer donation requests received for the City Parks Department. The draft policy is meant to provide guidance and consistency for those wishing to make a donation to the City Parks system and the staff charged with reviewing requests and coordinating for installation. The most common donations are benches, but can also include options for trees, plaques, etc.

The policy also sets a precedent in place for pre-existing donations in that they will not be maintained at city expense in perpetuity.

Staff is seeking input on the draft policy with the hopes of refining the policy and bringing it back for formal approval by the Commission at a later date.

Discussion took place regarding the draft Policy and this item will appear on the agenda for approval at a later date.

ARP Infill Housing Working Cash Fund Request

Jake Eckholm, Economic Development Director, presented information to Commission regarding the ARP Infill Housing Working Cash Fund Request.

Staff is requesting authorization to issue an inter-fund loan from the General Fund (101) to the Public Improvement Fund (404) of one million dollars (\$1,000,000) to ensure working capital on hand for the ARP Infill Housing Program being implemented by Briggs Builders and West Urban Properties.

We are working diligently on infilling owner occupied housing in the community through the five million dollar commitment from the City Commission from American Rescue Plan Act funds. Mr. Briggs is working with the City to secure additional financing through the Community Foundation in order to infill 6 total homes in Jackson Hill, and Mr. Dusendang has a working total of 34-36 units depending on pricing that will primarily be placed in McLaughlin and Nelson. 18 are currently in the permitted stage at various levels of completion, and therein lies the issue. The

structure of the agreements for both developers indicates that the city make them whole for their half of the investment in each house 45 days after Certificate of Occupancy is issued, or at time of sale. With the rate of building that is necessary to keep various subcontractors engaged during this very difficult labor market, it is likely that we will run into cash on hand issues in the ARP program wherein all of our money is “tied up in inventory.”

Staff is requesting that the General Fund, which currently has a fund reserve of 9.6 million dollars, make a temporary interfund loan to the Property Improvement Fund of 1 million dollars, which is enough to fully implement 4 builds at the contracted prices. This should be enough cushion to keep our building partners and their contractors working consistently through project implementation. The structure would require that all city proceeds from sale are booked into the Public Improvement Fund, and that the full 1 million dollars is returned to the General Fund in a lump sum transfer at the culmination of both ARP infill housing projects.

Discussion of this information took place and this item will be on the regular meeting agenda on August 9, 2022 for consideration.

Public Comment – Public comment was received

Adjournment: The City Commission Worksession Meeting adjourned at 7:03 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 9, 2022 @ 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, Michigan at 5:30 p.m., Tuesday, August 9, 2022, Reverend Eileen Stoffan, St. Paul's Episcopal Church, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

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

Absent: Commissioner Eric Hood

PUBLIC COMMENT ON AGENDA ITEMS: No public comments received.

2022-73 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the July 11, 2022 Worksession and July 12, 2022 Regular Meeting.

STAFF RECOMMENDATION: To approve the minutes.

B. Sanford Street Reconstruction DPW

SUMMARY OF REQUEST: Authorize the award of the Sanford Street contract to the low bidder, Kamminga and Roodvoets, and authorize the clerk to sign the resolution.

Staff solicited bids for sewer replacement, water main replacement and road reconstruction on Sanford Street from Laketon Avenue north to Apple Avenue.

Bids received are as follows:

- \$4,907,094.50 – Kamminga & Roodvoets
- \$5,946,882.00 – Schippers Excavating

This project is financed through the sale of bonds in partnership with the State of Michigan Clean Water and Drinking Water Revolving Funds. The State of Michigan programs offer grants and principal forgiveness for portions of the project.

The project would be constructed during the 2023 construction season.

AMOUNT REQUESTED:

\$4,907,094.50

AMOUNT BUDGETED:

\$6,700,000 (TOTAL)

22/23 - \$3,319,500

23/24 - \$3,319,500 (Estimated)

FUND OR ACCOUNT: 590/591-92117

STAFF RECOMMENDATION: Approve the award of the Sanford Street project to the low bidder, Kamminga and Roodvoets, and authorize the Clerk to sign the resolution.

C. Lead Service Line Replacements DPW

SUMMARY OF REQUEST: Authorize the award of the Lead Service Line Replacement contract to the low bidder, Gustafson HDD, and authorize the clerk to sign the resolution.

Staff solicited bids for Lead Service Line Replacements on Jarman, Dyson, Elwood, Superior, and Ray Streets from Keating Avenue north to Laketon Avenue for a total of approximately 180 residents.

Bids received are as follows:

- \$1,294,270.00 – Gustafson HDD
- \$1,564,515.00 – McCormick Sand, Inc.
- \$1,623,306.25 – SWT Exc
- \$2,071,677.50 – Wadel Stabilization

This project is financed through the sale of bonds in partnership with the State of Michigan Drinking Water Revolving Funds. The State of Michigan awarded the City of Muskegon \$3M to use towards Lead Service Line Replacements in their FY22 program which will be 100% forgiven upon loan closure.

The project would be constructed sometime in the next three years and was not shown on the 22/23 budget until a schedule can be finalized. As noted above the costs will be offset with revenue having no net impact on the budget when a schedule is finalized.

The reminder of the \$3M grant is intended to be used for in house work to replace lead service lines by city crews.

AMOUNT REQUESTED: \$1,294,270.00

AMOUNT BUDGETED: \$3,000,000.00

FUND OR ACCOUNT: 591-TBD

STAFF RECOMMENDATION: Approve the award of the Lead Service Line project to the low bidder Gustafson HDD, and authorize the clerk to sign the resolution.

D. Getty Street Traffic Study DPW

SUMMARY OF REQUEST: Staff is requesting authorization to sign a Professional Services Agreement for \$27,352 with Progressive AE to provide traffic engineering services for a traffic study of Getty Street.

Conversion of four-lane roads, such as Getty Street, to three-lane roads has been proven to be safer and to provide better access for non-vehicular users with little or no impact to travel times when properly studied and executed. Staff feels that Getty Street could be a great candidate for this treatment, and has worked with Norton Shores and Muskegon Heights to solicit a study to determine if the project should move forward.

Staff solicited proposals from engineering firms to provide traffic engineering services for data collection, modeling and recommendations for Getty Street within the City limits (Hovey Street to Oak Street), and requested additional pricing for a study of Getty Street from Seaway Drive through the neighboring communities to the same Oak Street northern limit.

Firm	Score
DLZ, Inc.	780
Hubbell, Roth & Clark	780
Fleis & VandenBrink	880
Fishbeck	880
Progress AE	900
Spalding DeDecker	780

A draft agreement with Norton Shores and Muskegon Heights is included with this request, and has been submitted to those communities with the offer to partner on the study, allowing a conversion of the entire corridor.

This request is for only the portion within the City limits (Hovey Street to Oak Street). If Norton Shores and Muskegon Heights elect to move forward with their portions of the study, a future request to enter into the agreement will be brought to the Commission. Staff expects the cost of studying the entire corridor will not be more than this request due to economies of scale.

Staff is requesting to award the engineering services agreement to the highest scoring firm (Progressive AE). Staff scored the proposals using Qualifications Based Selection criteria to ensure we were selecting the best partner for this important project. The scoring showed Progressive AE as the leading firm, and staff recommends contracting with them based on their proposal and their history of service. Progressive AE has provided engineering services for the City of Muskegon in the past, and is currently assisting with the Shoreline Drive Pilot project. A summary score table is shown.

AMOUNT REQUESTED: \$27,352

AMOUNT BUDGETED: \$50,000

FUND OR ACCOUNT: 202 (Major Streets)

STAFF RECOMMENDATION: Authorize staff to sign a Professional Services Agreement for \$27,352 with Progress AE to provide traffic engineering services for a traffic study of Getty Street from Hovey to Oak streets.

E. Apple Avenue Traffic Study DPW

SUMMARY OF REQUEST: Staff is requesting authorization to sign a Professional Services Agreement for \$43,338 with Progressive AE to provide traffic engineering services for a traffic study of Apple Avenue.

MDOT has plans to reconstruct Apple Avenue in approximately 2026. MDOT is willing to engage with the City and other stakeholders to determine what the next version of Apple Avenue will look like. The study will provide data and recommendations related to vehicle, pedestrian and bicycle traffic. Specifically, the study will look at reducing the number of lanes in certain sections of the corridor to improve safety for all modes and improve access for non-vehicular users.

Staff solicited proposals from engineering firms to provide traffic engineering services for data collection, modeling, and recommendations for Apple Avenue within the City limits.

Staff is requesting to award the engineering services agreement to the highest scoring firm (Progressive AE). Staff scored the proposals using Qualifications Based Selection criteria to ensure we were selecting the best partner for this important project. The scoring showed Progressive AE as the leading firm, and staff recommends contracting with them based on their proposal and their history of service.

Progressive AE has provided engineering services for the City of Muskegon in the past, and is currently assisting with the Shoreline Drive Pilot project. A summary score table is shown.

Firm	Score
DLZ, Inc.	760
Hubbell, Roth & Clark	780
Fleis & VandenBrink	880
Fishbeck	880
Progressive AE	900
Rowe PSC	880
Spalding DeDecker	800

AMOUNT REQUESTED: \$43,338 AMOUNT BUDGETED: \$50,000

FUND OR ACCOUNT: 202 (Major Streets)

STAFF RECOMMENDATION: Authorize staff to sign a Professional Services Agreement for \$43,338 with Progressive AE to provide traffic engineering services for a traffic study of Apple Avenue within the City limits.

F. ARP Infill Housing Working Cash Fund Request Economic Development

SUMMARY OF REQUEST: Staff is requesting authorization to issue an inter-fund loan from the General Fund (101) to the Public Improvement Fund (404) of one million dollars (\$1,000,000) to ensure working Capital on hand for the ARP Infill

Housing Program being implemented by Briggs Builders and West Urban Properties.

We are working diligently on infilling owner occupied housing in the community through the five million dollar commitment from the City Commission from American Rescue Plan Act funds. Mr. Briggs is working with the City to secure additional financing through the Community Foundation in order to infill 6 total homes in Jackson Hill, and Mr. Dusendang has a working total of 34-36 units depending on pricing that will primarily be placed in McLaughlin and Nelson. 18 are currently in the permitted stage at various levels of completion, and therein lies the issue. The structure of the agreements for both developers indicates that the city make them whole for their half of the investment in each house 45 days after Certificate of Occupancy is issued, or at time of sale. With the rate of building that is necessary to keep various subcontractors engaged during this very difficult labor market, it is likely that we will run into cash on hand issues in the ARP program wherein all of our money is "tied up in inventory."

Staff is requesting that the General Fund, which currently has a fund reserve of 9.6 million dollars, make a temporary interfund loan to the Property Improvement Fund of 1 million dollars, which is enough to fully implement 4 builds at the contracted prices. This should be enough cushion to keep our building partners and their contractors working consistently through project implementation. The structure would require that all city proceeds from sale are booked into the Public Improvement Fund, and that the full 1 million dollars is returned to the General Fund in a lump sum transfer at the culmination of both ARP infill housing projects.

AMOUNT REQUESTED: \$1,000,000 (internal loan) AMOUNT BUDGETED: N/A

FUND OR ACCOUNT: (101) to (404)

STAFF RECOMMENDATION: Authorize staff to issue an inter-fund loan from General Fund (101) to the Public Improvement Fund (404) of one Million dollars (\$1,000,000) to ensure working capital on hand for the ARP Infill Housing Program being implemented by Briggs Builders and West Urban Properties.

G. MERS Amortization Extension Finance

SUMMARY OF REQUEST: The City of Muskegon and the Municipal Employees' Retirement System of Michigan (MERS) will enter into an agreement for an amortization extension. The extension is for all existing defined benefits plans with MERS.

MERS shall extend Employer's amortization period with respect to its UAL as follows:

- Division #01 (Non-Union General) & 11 (Clerical): Amortization of UAL to be extended from 9 to 14 years with required contributions revised effective with the applicable fiscal year of the annual valuation used for

the extension study or the date this signed agreement is received by MERS, whichever is latest.

- Division #02 (Non-Union Police) & 21 (Police Patrol): Amortization of UAL to be extended from 8 to 13 years with required contributions revised effective with the applicable fiscal year of the annual valuation used for the extension study or the date this signed agreement is received by MERS, whichever is latest.
- Division #10 (General – Retirees) & 20 (Police/Fire-Retirees): Amortization of UAL to be extended from 6 to 11 years with required contributions revised effective with the applicable fiscal year of the annual valuation used for the extension study or the date this signed agreement is received by MERS, whichever is latest.

The amortization extension allows the City to stabilize our annual projected contribution costs. Without these amortization extensions the City's annual contribution costs for Defined Benefits will peak to almost \$6 million per year for the years 2024-2028. With the extension the highest amount we will pay is \$4.87 million in 2028 (based on a 7.35% rate of return) from the actuarial report performed by Gabriel, Roeder, Smith & Company. Effective July 1, 2022 our current rates will be approximately \$5.02 million. With the extension our rate will be \$4.3 million effective July 1, 2022.

STAFF RECOMMENDATION: Authorize the Finance Director to enter into an agreement with the Municipal Employee's Retirement System of Michigan for an Amortization Extension.

H. MI-HOPE Leverage Funds CNS

SUMMARY OF REQUEST: The Community and Neighborhood Services Department is requesting \$150,000 in ARP funds to use as leverage for the Michigan Housing Opportunities Promoting Energy-Efficiency (MI-HOPE) Program through MSHDA that the department is applying for.

The MI-HOPE Program is intended to provide energy-efficiency activities that benefit area residents. It is funded through the US Department of Treasury American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds. The city will be applying for \$1,000,000 in funding through this opportunity to be used for energy-efficiency repairs for homeowners in Muskegon County, in an effort to improve our areas housing stock and ensure healthier and safer homes for our neighbors. The \$150,000 match will help support the administration of the grant and provide for an estimated additional 6 major repairs to the citizens of Muskegon County. This match aligns with the requirements and available uses of the ARP funds.

Due to the highly competitive nature of this grant, allocating match funds tangibly demonstrates the city's commitment to improving the living conditions

and reducing the energy expense of citizens. Although not required, providing match funds is viewed favorably, and can be a deciding factor in the approval of the application and grant award.

This grant will supplement the programming the City of Muskegon already offers through its CNS Department. In the past year alone, CNS has served over 110 households with health and safety related and energy-efficiency repairs. We are on track to exceed this number in the coming year. With the addition of our new Healthy Homes Program this grant, if awarded, will allow us to maximize the assistance we can provide to our neighbors.

With the 2022-27 City Commission Vision goals of increasing grant assistance to neighborhoods to reduce blight and improve environmental sustainability for projects within the city, this allocation closely aligns. Approval of this match will allow staff to implement programs necessary to accomplish these goals and support healthier and more energy-efficient housing for our community.

AMOUNT REQUESTED: \$150,000

AMOUNT BUDGETED: N/A

STAFF RECOMMENDATION: To approve the resolution supporting the allocation of \$150,000 of ARP fund as leverage for the MI-HOPE Grant, if awarded.

I. Water Supply System Bonds Series A & B Finance

SUMMARY OF REQUEST: Ordinance authorizing the issuance of Water Supply System Junior Lien Revenue Bonds Series A & B.

To authorize the issuance of Water Sewer Supply System Bonds, Series A in an amount not to exceed \$5,320,000.

To authorize the issuance of Water Sewer Supply System Bonds, Series B in an amount not to exceed \$3,560,000.

The Bonds are expected to be sold to the Michigan Finance Authority and payable in 20 annual principal installments at an interest rate of 1.875%. Scheduled closing is September 20th.

Estimated Principal Forgiveness is \$3,000,000.

FUND OR ACCOUNT: Water

STAFF RECOMMENDATION: To approve the Ordinance authorizing the issuance of Water Supply System Revenue Bonds.

J. Sanitary Sewer Supply System Bonds Finance

SUMMARY OF REQUEST: Ordinance authorizing the issuance of Sanitary Sewer Supply System Junior Lien Revenue Bonds.

To authorize the issuance of Sanitary Sewer Supply System Bonds in an amount not to exceed \$6,640,000. The Bonds are expected to be sold to the Michigan

Finance Authority and payable in 20 annual principal installments at an interest rate of 1.875%. Scheduled closing is September 20th.

Estimated Principal Forgiveness is unknown at this time.

FUND: Sewer

STAFF RECOMMENDATION: To approve the Ordinance authorizing the issuance of Sanitary Sewer Supply System Revenue Bonds.

Motion by Commissioner Ramsey, second by Vice Mayor German, to accept the consent agenda as presented.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner Gorman expressed her thanks to the Women's Division for their partnership in the installation of "One Drop", a new art installation on Shoreline Drive near the VanDyk Mortgage Convention Center.

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

ADJOURNMENT: The City Commission meeting adjourned at 5:46 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC - City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13, 2022		Title: Flag Policy	
Submitted By: Ann Meisch		Department: City Clerk	
Brief Summary: To adopt the updated flag policy.			
Detailed Summary & Background: Based on the Attorney's recommendation, staff felt it necessary to recommend changes to our current flag policy. The proposed policy would not allow the flying of any flags with the exception of United States of America, State of Michigan, the County of Muskegon, the City of Muskegon flag, a Sister Cities of the City of Muskegon flag, and visiting dignitaries from the Embassy and/or Consulate that are formally acknowledged by the Mayor and/or City Commission.			
Goal/Focus Area/Action Item Addressed:			
Amount Requested: NA		Amount Budgeted:	
Fund(s) or Account(s):		Fund(s) or Account(s):	
Recommended Motion: To adopt the amended flag policy as presented.			
Approvals: <i>Get approval from division head at a minimum prior to sending to the Clerk.</i> Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☒ Communication ☐ Legal Review ☒		Guest(s) Invited / Presenting Yes ☐ No ☐	
For City Clerk Use Only: Commission Action:			

City of Muskegon

Flag Policy

I. Purpose

To provide a policy to fly flags on City owned or occupied property or facilities.

II. City Commission Consideration and Decision

The flying of the United States of America, State of Michigan, the County of Muskegon, the City of Muskegon flag, a Sister Cities of the City of Muskegon flag, and visiting dignitaries from the Embassy and/or Consulate that are formally acknowledged by the Mayor and/or City Commission are permissible and may be flown at City property as authorized by City staff.

The flying of any other flag is not permissible. This includes flags from other countries, flags recognizing a cause, flags recognizing a festival, flags recognizing an ethnicity, etc.

Certification

This policy was adopted at a regular meeting of the City Commission, held on _____. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

Ann Marie Meisch, MMC, City Clerk

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: September 13, 2022		Title: General Fund Transfers for FY2021-22	
Submitted By: Kenneth D. Grant		Department: Finance	
Brief Summary: During the close out of fiscal year 2021-22 and based on the financial results for the fiscal year ended June 30, 2022 we want to transfer \$115,000 from the General Fund to the Trinity Health Arena Fund to eliminate a fund balance deficit. Also, we want to transfer \$2,500 from the General Fund to the Tree Fund to eliminate a fund balance deficit. Finally, we want to transfer \$40,750.14 from the General Fund to the State Grants fund to cover bad debt. Staff is requesting formal approval of these General Fund transfers.			
Detailed Summary & Background: At the close of FY2021-22 three funds that required a transfer from the General Fund. (1) The FY2021-22 budget called for a General Fund transfer of \$115,000 to the Trinity Health Arena Fund to avoid a fund balance deficit. The original budget requested a \$350,000 transfer to the Trinity Health Arena. The Arena's revenue was better than project and we thought the Arena did not need any transfer from the General Fund. However, at the end of the 2021-22 year the expenditures exceeded revenue by approximately \$115,000. (2) The Tree fund has a small deficit that needs to be covered by the General Fund of \$2,500 to avoid a fund balance deficit. (3) The FY2021-22 budget called for a General Fund transfer of \$40,750.14 to the State Grant fund to write off bad debt from the CMI Site Assessment and Hendrickson Brownfield loan. Commission previously approved the debt write off at July 26, 2022. Now are officially asking to transfer the funds from the General Fund to complete the debt write off.			
Goal/Focus Area/Action Item Addressed:			
Amount Requested: \$158,250.14		Amount Budgeted:	
Fund(s) or Account(s): 101		Fund(s) or Account(s):	
Recommended Motion: To approve the General Fund transfers of \$115,000 to the Trinity Health Fund, \$40,750.14 to the State Grants Fund, and \$2,500 to the Tree Replacement Fund.			
Approvals: <i>Get approval from division head at a minimum prior to sending to the Clerk.</i>		Guest(s) Invited / Presenting	

Immediate Division Head	☐	Information Technology	☐	Yes	☐
Other Division Heads	☐	Communication	☐	No	☐
Legal Review	☐				
For City Clerk Use Only: Commission Action:					

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 07/26/2022	Title: Uncollectible Accounts
Submitted By: Jessica Rabe	Department: Finance
Brief Summary: Write off CMI -Site Assessment \$22,195.21 and Hendrickson Brownfield loan \$18,554.93 as bad debt.	
Detailed Summary: Write off CMI -Site Assessment \$22,195.21 and Hendrickson Brownfield loan \$18,554.93 as bad debt. The Hendrickson Brownfield is from March of 2017 and the CMI Assessment is from 2004.	
Amount Requested: \$40,750.14	Amount Budgeted:
Fund(s) or Account(s):482	Fund(s) or Account(s):482
Recommended Motion: Write off Write off CMI -Site Assessment \$22,195.21 and Hendrickson Brownfield loan \$18,554.93 as bad debt.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action	

GL NUMBER	DESCRIPTION	2021-22 AMENDED BUDGET	YTD BALANCE 06/30/2022	AVAILABLE BALANCE	% BDGT USED	YTD BALANCE 06/30/2021
Fund 254 - MERCY HEALTH ARENA						
Expenditures						
Account Type: Expenditure						
SALARIES & BENEFITS						
806	MERCY HEALTH ARENA	423,000.00	418,720.59	4,279.41	98.99	337,447.97
SALARIES & BENEFITS		423,000.00	418,720.59	4,279.41	98.99	337,447.97
CONTRACTUAL SERVICES						
806	MERCY HEALTH ARENA	1,240,000.00	1,301,307.35	(61,307.35)	104.94	817,984.64
901		932,143.00	975,891.14	(43,748.14)	104.69	15,820.83
CONTRACTUAL SERVICES		2,172,143.00	2,277,198.49	(105,055.49)	104.84	833,805.47
SUPPLIES						
806	MERCY HEALTH ARENA	365,000.00	415,619.96	(50,619.96)	110.98	297,179.89
812	CARLISLE	0.00	4,412.70	(4,412.70)	100.00	0.00
901	UTILITY ASSISTANCE	0.00	14,329.80	(14,329.80)	100.00	0.00
SUPPLIES		365,000.00	434,362.46	(69,362.46)	119.00	297,179.89
OTHER EXPENSES						
806	MERCY HEALTH ARENA	35,000.00	34,570.08	429.92	98.77	123,908.41
OTHER EXPENSES		35,000.00	34,570.08	429.92	98.77	123,908.41
CAPITAL OUTLAYS						
806	MERCY HEALTH ARENA	97,000.00	99,938.96	(2,938.96)	103.03	154,268.03
901	CARLISLE BUILDOUT	1,205,617.00	996,920.40	208,696.60	82.69	0.00
CAPITAL OUTLAYS		1,302,617.00	1,096,859.36	205,757.64	84.20	154,268.03
Total Expenditure:		4,297,760.00	4,261,710.98	36,049.02	99.16	1,746,609.77
TOTAL EXPENDITURES		4,297,760.00	4,261,710.98	36,049.02	99.16	1,746,609.77
Fund 254 - MERCY HEALTH ARENA:						
TOTAL REVENUES						
TOTAL EXPENDITURES		4,028,421.00	4,152,215.87	(123,794.87)	103.07	1,769,977.99
NET OF REVENUES & EXPENDITURES		4,297,760.00	4,261,710.98	36,049.02	99.16	1,746,609.77
		(269,339.00)	(109,495.11)	(159,843.89)	40.65	23,368.22

GL NUMBER	DESCRIPTION	2021-22 AMENDED BUDGET	YTD BALANCE 06/30/2022	AVAILABLE BALANCE	% BDGT USED	YTD BALANCE 06/30/2021
Fund 254 - MERCY HEALTH ARENA						
Revenues						
Account Type: Revenue						
FEDERAL GRANTS						
254-000-502	FEDERAL GRANTS	625,498.00	625,497.92	0.08	100.00	0.00
FEDERAL GRANTS		625,498.00	625,497.92	0.08	100.00	0.00
CHARGES FOR SERVICE						
254-000-613-004691	EVENT REVENUE	554,000.00	560,849.91	(6,849.91)	101.24	132,041.85
254-000-613-004692	ARENA MAINTENANCE CHARGE	0.00	860,780.09	(860,780.09)	100.00	0.00
254-000-613-004696	CONCESSION NON ALCHOLIC	58,000.00	60,860.49	(2,860.49)	104.93	22,917.01
254-000-614-004630	CARLISLES	0.00	4,412.15	(4,412.15)	100.00	0.00
254-000-614-004639	RAD DADS	230,000.00	296,730.02	(66,730.02)	129.01	178,004.82
254-000-614-004640	TICKET SURCHARGE	35,000.00	34,484.16	515.84	98.53	10,716.50
254-000-614-004646	CONCESSIONS FOOD	87,000.00	88,202.44	(1,202.44)	101.38	39,445.16
254-000-614-004647	MERCHANDISE - ARENA	0.00	0.00	0.00	0.00	2,120.12
254-000-614-004697	ALCOHOLIC BEVERAGE	207,500.00	209,759.92	(2,259.92)	101.09	60,351.24
254-000-614-004698	FLOOR RENTAL	250,000.00	250,700.24	(700.24)	100.28	223,899.42
254-000-620-004619	MISC. SALES AND SERVICES	156,198.00	6,190.07	150,007.93	3.96	1,017.04
254-000-626-004666	PARKING LOT RENTAL - WESTERN AVENUE	41,000.00	45,266.00	(4,266.00)	110.40	13,450.00
254-000-632	ANNEX REVENUE	40,770.00	42,282.50	(1,512.50)	103.71	5,219.24
254-000-642-004652	SALES & SERVICE	550.00	550.00	0.00	100.00	0.00
254-000-667-004667	PARKING LOT RENTAL - SHORELINE	17,000.00	16,967.50	32.50	99.81	1,265.00
254-000-667-004677	RENT	142,000.00	141,383.99	616.01	99.57	186,349.99
254-000-671	ADVERTISING REVENUE	140,000.00	139,687.94	312.06	99.78	106,000.00
CHARGES FOR SERVICE		1,959,018.00	2,759,107.42	(800,089.42)	140.84	982,797.39
FINES & PENALTIES						
254-000-657-004802	REIMB:SERVICES RENDERED	2,500.00	2,366.02	133.98	94.64	12,344.80
254-000-665-004970	INTEREST INCOME	0.00	340.20	(340.20)	100.00	0.00
FINES & PENALTIES		2,500.00	2,706.22	(206.22)	108.25	12,344.80
CONTRIBUTIONS & MISCELLANEOUS						
254-000-674-004805	CONTRIBUTIONS	0.00	0.00	0.00	0.00	4,000.00
CONTRIBUTIONS & MISCELLANEOUS		0.00	0.00	0.00	0.00	4,000.00
LICENSES & PERMITS						
254-000-684-004800	MISC. & SUNDRY	662,202.00	14,904.31	647,297.69	2.25	5,835.80
LICENSES & PERMITS		662,202.00	14,904.31	647,297.69	2.25	5,835.80
INTEREST & OPERATING TRANSFERS IN						
254-000-699-100000	OP. TRANS FROM GENERAL FUND	0.00	750,000.00	(750,000.00)	100.00	725,000.00
254-000-699-400000	OP. TRANS FROM CAPITAL PROJECTS	779,203.00	0.00	779,203.00	0.00	40,000.00
INTEREST & OPERATING TRANSFERS IN		779,203.00	750,000.00	29,203.00	96.25	765,000.00
Total Revenue:		4,028,421.00	4,152,215.87	(123,794.87)	103.07	1,769,977.99
TOTAL REVENUES		4,028,421.00	4,152,215.87	(123,794.87)	103.07	1,769,977.99

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13 th , 2022	Title: PowerMIFleet Enrollment
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to enroll in the PowerMIFleet Program	
Detailed Summary & Background: The PowerMIFleet program through Consumers Energy provides assistance to the City in seeking to begin consideration for electrifying the cities fleet of vehicles. Through the program Consumers Energy will provide a number of services to assist the city in a number of ways: • Review of existing fleet to determine the vehicles best suited for electrification • Review of existing facilities to determine the best location for installation of charging infrastructure • Identification and pursuit of grants and rebates to support the initiative There is no immediate cost for enrollment in the program, however in exchange for enrollment in the program the city is making a commitment to purchase and deploy at least one (1) electric vehicle through the program. There is no set timeline for when that needs to be accomplished but note that the current FY budget did not propose any EV so if there is opportunity to take action yet this FY there could be unbudgeted costs to account for in a future reforecast. The equipment fund should be in a position to absorb those costs with minimal modification provided they are not excessive.	
Goal/Focus Area/Action Item Addressed: Financial Infrastructure / Sustainability in financial practices and infrastructure / Investigate options to improve environmental sustainability for projects within the city	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Authorize staff to enroll in the PowerMIFleet Program with Consumers Energy.	
Approvals: Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☒ Communication ☐	Guest(s) Invited / Presenting: Yes ☐ No ☒

For City Clerk Use Only:

Commission Action:

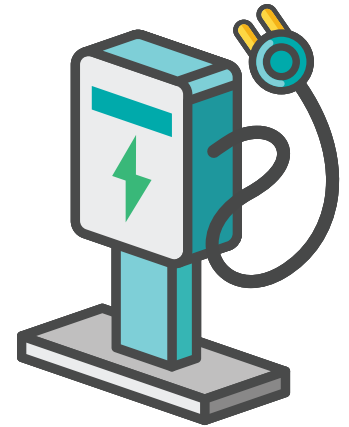
PowerMIFleet™

Electrifying Michigan's fleet vehicles

PowerMIFleet is a program designed to help fleet owners and operators reduce operating costs, eliminate emissions, and simplify vehicle maintenance by transitioning to electric vehicles.

We're here to connect your organization with the planning resources, expert guidance and financial incentives to easily and cost-effectively transition to an electric fleet.

It's part of our commitment to help drive savings for your wallet and the environment, while keeping the grid operating efficiently and sustainably through clean energy transportation.



Charging Station Rebates

PowerMIFleet offers rebates of up to \$5,000 per Level 2 Charge Port, \$35,000 per non-public DC Fast Charger and \$70,000 per public-use DC Fast Charger.



Make Ready Upgrades

We will pay for upgrades to electric infrastructure from the power lines to the transformer and meter to get your site charger ready.



Electrification Assessment

We'll partner with your team and a fleet electrification consultant to gather and analyze performance data on your existing fleet vehicles. You'll receive a customized electrification assessment, including vehicle and charging station recommendations, cost savings, and environmental benefits.

PowerMIFleet™

Electrifying Michigan's fleet vehicles

Benefits for Your Bottom Line & The Environment

Fuel Savings

EVs are more efficient than diesel and natural gas engines and offer significant fuel cost savings. Electricity prices are more stable, making it easy to budget fueling costs with confidence.

Maintenance Savings

EVs have fewer and less complex parts, which simplifies maintenance, results in less down time, and lowers overall lifetime operation and maintenance costs. Plus, EV batteries are covered by a minimum warranty of 8 years or 100,000 miles.

Better Performance

EVs offer instant torque, providing quick, smooth, responsive acceleration. Electric vehicle batteries also provide a low center of gravity which improves handling, responsiveness and ride comfort.

Support Sustainability

Transportation is the single largest source of climate-related pollution. An electric vehicle fleet can be part of a larger strategy for reaching your sustainability goals by decreasing harmful greenhouse gas emissions.

Fewer Emissions

EVs produce fewer emissions over their operational life than gas- or diesel-powered counterparts. EVs don't have a tailpipe and don't produce direct emissions like carbon dioxide, reducing air pollution locally.

Managed Charging

With a bi-directional Vehicle to Grid (V2G) or Vehicle to Building (V2B) power flow demonstration project, you could add additional reliability. Save even more when charging off-peak.

Eligibility Requirements

Be a Consumers Energy Electric Customer

Customers who purchase electricity through an Alternate Electric Supplier ("Retail Open Access") are not eligible to participate.

Own or Lease the Property

You must have authority to install charging infrastructure at your site.

Own and Use at Least One EV

Your business or organization must acquire and deploy a minimum of one light, medium, or heavy-duty electric fleet vehicles.

Provide Data Related to Charger Use

Once the chargers are installed and operational, your organization must agree to share charger use data with Consumers Energy for the duration of the PowerMIFleet pilot program.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13 th , 2022	Title: Shoreline Drive Engineering Amendment
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to sign the attached amendment to the professional services agreement with ProgressiveAE in relation to the Shoreline Drive Road Diet.	
Detailed Summary & Background: ProgressiveAE is requesting an amendment to the professional services agreement related to a change on the Shoreline Drive project outside of the original scope. The amendment requests an additional \$13,700 which represents a 28% increase on the original \$49,090 contract and requires Commission approval based on the percentage increase. The additional costs are related to a change in the project scope to complete the pilot in two separate phases rather than a single phase. The split phasing required the engineer to develop additional sets of plans and also provides an opportunity for additional data collection during both phases which was not originally anticipated in the scope. Staff has reviewed the amendment and does not have any objections to the request.	
Goal/Focus Area/Action Item Addressed: Designation Community & Quality of Life / Improved Access to the Waterfront Financial Infrastructure / Decrease infrastructure burden on residents	
Amount Requested: \$13,700 (INCREASE) \$62,790 (TOTAL)	Amount Budgeted: \$115,000 (21/22 & 22/23)
Fund(s) or Account(s): 202	Fund(s) or Account(s): 202
Recommended Motion: Authorize staff to approve the amendment request with ProgressiveAE for Shoreline Drive Traffic Engineering.	
Approvals: Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☒ Communication ☒	Guest(s) Invited / Presenting: Yes ☐ No ☒

For City Clerk Use Only:

Commission Action:



August 24, 2022

Dan VanderHeide PE, Deputy Director
City of Muskegon
Department of Public Works
1350 Keating Avenue
Muskegon, MI 49442

Re: Shoreline Drive Maintenance of Traffic Additional Services

Dear Mr. VanderHeide,

Progressive AE, Inc. (Progressive AE) is committed to giving the City of Muskegon (City) the best quality service. We appreciate the opportunity to work closely with the City and strive to develop a long-lasting relationship. Please see the following additional scope of services for the added Maintenance of Traffic (MOT) plans and traffic counts.

ADDITIONAL SCOPE OF SERVICES

The additional scope of services includes creating a two-stage MOT plan and bid package for the roadway maintenance project on Shoreline Drive. Additionally Progressive AE will perform traffic counts at the 4th Street intersection and at two possible diversion routes on Muskegon Drive and Webster Avenue during the lane closure. Our team will perform a traffic analysis from the data collected and review the findings with the City. These findings will help assist in determining areas of Shoreline Drive where there are issues or concerns due to the reduced footprint and potential traffic diversion routes.

PROFESSIONAL COMPENSATION

Based upon the above-identified scope of services, Progressive AE proposes a stipulated sum of \$12,000 (twelve thousand dollars). Reimbursable expenses are in addition to the professional compensation, estimated at \$1,700 (one thousand seven hundred dollars), and will be invoiced according to the attached Schedule of Invoice Rates.

Progressive AE has prepared this proposal for City of Muskegon and we request that it be treated as confidential and not copied or distributed for any reason other than evaluation for hire.

The terms of this proposal defining project understanding, scope, schedule, clarifications, and professional compensation are incorporated into the Standard Agreement Provisions for Professional Services which are attached. The terms and conditions as identified in the Standard Agreement Provisions will be valid unless superseded by an AIA Standard Form of Agreement. If this proposal meets with your approval, please sign below and return a copy of the signed proposal. Your signature will be our authorization to begin the work and place the project in the firm's schedule. If you do not sign and return this proposal, and after receipt of this proposal you request or accept services from Progressive AE in connection with this or any other engagement, your request or acceptance of such services will be deemed to be an acquiescence or agreement with the terms provided in this proposal.

Progressive AE, Inc.

Corporate Office: | 1811 4 Mile Road NE | Grand Rapids, MI 49525 | 616.361.2664 | progressiveae.com
Regional Office: | 330 South Tryon Street, Suite 500 | Charlotte, NC 28202 | 704.731.8080 | progressiveae.com

We look forward to working on this project with you and your team.

Sincerely,



Michael T. Miller PE
Senior Transportation Engineer



Christopher E. Zull PE
Practice Leader

Accepted By: _____

Printed Name: _____ Date: _____

Dan VanderHeide
Deputy Director

MTM/ecy

P:\53766013\01 ADMIN\A1 CONTRACTS\la Working Proposals\2022 08 24 Scope for Additional Services.docx

Progressive AE, Inc.

Corporate Office: | 1811 4 Mile Road NE | Grand Rapids, MI 49525 | 616.361.2664 | progressiveae.com
Regional Office: | 330 South Tryon Street, Suite 500 | Charlotte, NC 28202 | 704.731.8080 | progressiveae.com

Schedule of Invoice Rates - 2022

Hourly Staff Charges

Class 10 Personnel:	Principals	\$245/hour
Class 9 Personnel:	Practice Leader, Directors	\$215/hour
Class 8 Personnel:	Senior Architect, Senior Engineer, Senior Project Manager	\$185/hour
Class 7 Personnel:	Senior Project Manager, Senior Architect, Senior Interior Designer, Senior Engineer, Senior Scientist	\$160/hour
Class 6 Personnel:	Construction Superintendent, Engineer II, Project Manager II, Senior Construction Administrator, Senior Technician	\$145/hour
Class 5 Personnel:	Architect II, Construction Administrator, Design Architect I, Engineer II, Project Manager I, Senior Interior Designer, Senior Technician	\$130/hour
Class 4 Personnel:	Architect I, Construction Superintendent, Interior Designer II, Engineer I, GIS Technician, Planner I, Technician II	\$110/hour
Class 3 Personnel:	Executive Assistant, Field Scientist, Graduate Architect, Graduate Engineer, Interior Designer I, Technician I	\$ 90/hour
Class 2 Personnel:	Graduate Interior Designer, Graduate Architect, Project Assistant	\$ 75/hour
Class 1 Personnel:	Interns	\$ 60/hour

Reimbursable Expenses

1. Fees for Program, Financial or Procurement Management services when the Owner has engaged a supplier and Architect is subject to a fee.
2. Building permit fees and plan review fees as required by the authorities having jurisdiction over projects at cost plus 10%.
3. Outside services, consultants, travel and lodging at cost plus 10%.
4. Copies, telephone, cell phone voice and data charges and office supplies will be charged through a \$25 per month Misc. Office Expense charge. This charge will not be applied to invoices under \$1,000.
5. CAD black/white plotting at 15¢ per square foot; CAD color plotting at 25¢ per square foot; CAD low density color images at 30¢ each; CAD high density color images at 50¢ each; large-format color plotting at \$9 per square foot. Postage, shipping, and lab tests at cost. Files written to CD will be minimum \$100 per drawing or \$500 maximum. Passenger vehicle mileage on projects at the IRS Standard Rate (currently 62.5¢ per mile). Lodging, meals, and airfare at cost. Machine rental GPS at \$250 per day. Traffic Counters at \$60 per count. Surveying supplies at 50¢ per stake.
6. Overtime expenses requiring higher than normal rates if authorized by owner.

Notes:

1. Invoices are due upon receipt. Unpaid invoices shall bear interest at a rate of 1 percent per month if not paid within 30 days of the date of the invoice.
2. Special media requests may be at higher rate.
3. Hourly staff charges and expenses subject to change annually.

STD RATE

July 1, 2022

Progressive AE, Inc.

Corporate Office: | 1811 4 Mile Road NE | Grand Rapids, MI 49525 | 616.361.2664 | progressiveae.com
Regional Office: | 330 South Tryon Street, Suite 500 | Charlotte, NC 28202 | 704.731.8080 | progressiveae.com

The parties to this agreement, Progressive AE, Inc., Grand Rapids, Michigan, USA, hereinafter called the ENGINEER and City of Muskegon, Muskegon, Michigan, USA, hereinafter called the OWNER, hereby agree to the following conditions:

1. Limit of Scope: The services provided by the ENGINEER shall be limited to those described in the proposal dated August 24, 2022. The parties agree that the terms of the proposal are incorporated herein by reference, and are part of this agreement as if fully set forth herein. If any terms set forth in the proposal are expressly in conflict with the terms hereof, the terms of the proposal shall govern.
2. Changed Conditions: If, during the term of this Agreement, the ENGINEER becomes aware of any circumstances or conditions that were not originally contemplated by or known to the ENGINEER, then to the extent that they affect the scope of services, compensations, schedule, allocation of risks or other material terms of this Agreement, the ENGINEER may call for re-negotiation of appropriate portions of the Agreement. The ENGINEER shall notify the OWNER of the changed conditions necessitating re-negotiation, and the ENGINEER and the OWNER shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
3. Delays: The OWNER agrees that the ENGINEER is not responsible for any damages arising directly or indirectly from any delays for causes beyond the ENGINEER's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions, epidemics, pandemics or other natural disasters or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in a timely manner; failure of performance by OWNER or the OWNER's contractors or consultants; or discovery of any hazardous substance or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by the ENGINEER to perform its services in an orderly and efficient manner, the ENGINEER shall be entitled to a reasonable adjustment in schedule and compensation.

4. Additional Services: Additional services not specifically identified in the Scope of Services shall be paid for by the OWNER in addition to the fees previously stated, provided the OWNER authorizes such additional services in writing. Special services will be billed monthly as work progresses and invoices are due upon receipt. If services covered by this agreement have not been completed within twelve (12) months of the date of this agreement, through no fault of the ENGINEER, extension of the ENGINEER'S services beyond that time shall be compensated as additional services.
5. Standard of Care: Professional Services provided by the ENGINEER will be conducted in a manner consistent with that level of care ordinarily and normally exercised by licensed ENGINEERS and engineers practicing in the State where the Project resides. The OWNER and ENGINEER agree that a contingency in the amount of three percent (3%) of the cost of the work be established, as required, for changes that may be required because of possible omissions, ambiguities, or inconsistencies in plans and specifications.
6. Value-Added/Betterment: If, due to the ENGINEER's error, any required item or component of the project is omitted from the ENGINEER's Construction documents, the ENGINEER shall not be responsible for paying the cost to add such item or components to the extent that such item or component would have otherwise been necessary to the project or otherwise adds value or betterment to the project. In no event will the ENGINEER be responsible for any cost or expenses that provides value, upgrade, or enhancement of the project.

7. Hazardous Materials: The ENGINEER shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
8. Condominium Conversion: If the ENGINEER's services and Construction Documents are intended for the design and construction of residential rental units, they shall be under the ownership and control of a single, integrated OWNER. In the event the Project is changed to any other purpose or use, including, but not limited to, subdivision into individual units for sale, the ENGINEER shall have no responsibility, and shall be released from all obligations and liabilities for the Project, and each and every right, license and/or ownership interest of the OWNER of the Construction Documents shall be void. The OWNER shall be expressly prohibited from making any further use of the Construction Documents for any purpose, including, but not limited to, the conversion of the Project to another purpose. Further, the OWNER agrees, to the fullest extent permitted by law, to indemnify, immediately defend, and hold harmless the ENGINEER, its officers, directors, employees and subconsultants (collectively, ENGINEER) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the services performed under this Agreement.
9. Opinions of Probable Construction Cost: In providing opinions of probable construction cost, the OWNER understands that the ENGINEER has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the ENGINEER's opinions of probable construction costs are made on the basis of the ENGINEER's professional judgment and experience. The ENGINEER makes no warranty, express or implied that the bids or the negotiated cost of the Work will not vary from the ENGINEER's opinion of probable construction cost.
10. Schedule for Rendering Services: The ENGINEER shall prepare and submit for OWNER approval a schedule for the performance of the ENGINEER's services. This schedule shall include reasonable allowances for review and approval times required by the OWNER, performance of services by the OWNER's consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by the OWNER, or for delays or other causes beyond the ENGINEER's reasonable control.
11. Ownership of Reports, Drawings and Other Materials: The OWNER agrees that all reports, drawings, letters, worksheets, plans, preliminary material tables, supportive data, documents and other materials produced by the ENGINEER in the course of and for the purpose of meeting this contract are the property of the ENGINEER, shall remain in the possession of the ENGINEER and the ENGINEER has and retains all copyrights in such material. Upon execution of this Agreement, the ENGINEER grants to the Owner a nonexclusive license to reproduce the ENGINEER's Instrument of Service solely for the purposes of constructing, using and maintaining the Project provided that the Owner shall comply with all obligations including the prompt payment of all sums when due, under this Agreement.
12. Alteration and Reuse of CAD Information: Because computer-aided design/drafting (CAD) information stored in electronic form can be modified by other parties, intentionally or otherwise, without notice or indication of said modifications, the ENGINEER reserves the right to remove all indications of its ownership and/or involvement in the material from each electronic medium not held in its possession. The OWNER may retain copies of the work performed by the ENGINEER in CAD form. Release of electronic media will be by execution of the ENGINEER's Release of Electronic Media Request Form. Copies shall be for information and used by the OWNER for the specific purpose for which the ENGINEER was engaged. Said material shall

not be used by the OWNER, or transferred to any other party, for use in other projects, additions to the current project, or any other purpose for which the material was not strictly intended without the ENGINEER's express written permission. Any unauthorized modification or reuse of the materials shall be at the OWNER's sole risk, and the OWNER agrees to defend, indemnify, and hold the ENGINEER harmless, from all claims, injuries, damages, losses, expenses, and attorneys' fees arising out of the unauthorized use or modification of all Project documentation.

13. Payment Terms: Invoices will be submitted by the ENGINEER monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the date of invoice. Invoices past due shall accrue interest at one percent (1%) per month from the original invoice date. If past due invoices cause the ENGINEER to proceed with legal action or collection services, the OWNER agrees to pay all of the ENGINEER's collection expenses including reasonable attorney fees.
14. Disputed Invoices: If the OWNER objects to any portion of an invoice, the OWNER shall so notify the ENGINEER in writing within ten (10) calendar days of receipt of the invoice. The OWNER shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest at one percent (1%) per month shall be paid by the OWNER on all disputed invoice amounts that are subsequently resolved in the ENGINEER's favor and shall be calculated on the unpaid balance from the due date of the invoice.
15. Abandonment of Work: If any work is abandoned or suspended, the ENGINEER shall be paid for services performed prior to receipt of written notice from the OWNER of abandonment or suspension.
16. Professional Liability Insurance and Limitation of Liability: The ENGINEER maintains professional liability insurance as part of its normal business practice. The OWNER agrees to limit the ENGINEER's liability to the OWNER and to all Construction Contractors and Subcontractors on the project due to the ENGINEER's negligent acts, errors, or omissions, such that the total aggregate liability of the ENGINEER to all those named shall not exceed the amount of the ENGINEER's compensation for the Project.
17. Indemnification: Subject to the limitation in paragraph 16 above, the ENGINEER agrees to the fullest extent permitted by law, to indemnify and hold harmless the OWNER against damages, liabilities and costs arising from the negligent acts of the ENGINEER in the performance of professional services under this Agreement, to the extent that the ENGINEER is responsible for such damages, liabilities and costs. The ENGINEER shall not be obligated to indemnify the OWNER for the OWNER's own negligence.
18. Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the ENGINEER, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of incidental, indirect and consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the OWNER and the ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

19. Dispute Resolution: In an effort to resolve any conflict, the duly authorized representatives of each party will meet together in good faith in an attempt to resolve the conflict. If this attempted resolution fails to resolve the claim or dispute, the parties agree that all claims, disputes, and other matters in question between the parties arising out of or relating to this Agreement or breach thereof first shall be submitted for non-binding mediation to any one of the following, as agreed to by the parties: American Arbitration Association, American Intermediation Service, Americord, Dispute Resolution, Inc., Endispute, or Judicate. The parties hereto agree to fully cooperate and participate in good faith to resolve the dispute(s). The cost of mediation shall be shared equally by the parties hereto. Any time expended in mediation shall not be included in calculating the time for filing arbitration.

If mediation fails to resolve the claim or dispute, the matter shall be submitted to arbitration with the American Arbitration Association under the Construction Industry rules, unless the parties agree otherwise or unless a plaintiff not a party hereto institutes litigation in a court of competent jurisdiction and said court takes personal jurisdiction over one of the parties hereto regarding the same subject matter as in dispute between the parties hereto.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, any additional person not a party to this Agreement except by written consent of the parties and such consent to arbitration involving an additional person(s) shall not constitute consent to arbitration of any dispute not described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person(s) shall be specifically enforceable under the prevailing arbitration law.

The demand for arbitration shall be made within one (1) year of the date the claimant knew or should have known of the existence of the claim, dispute, or other matter but in no event later than 3 years after the date of substantial completion of the project. If the demand for arbitration is not effectuated within such times, the claim, dispute, or other matter shall be forever barred.

The decision rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event either party makes a claim or brings an arbitration action or lawsuit against the other party for any act arising out of the performance of the services hereunder, and the claimant fails to prove such claim or action, then the claimant shall pay all legal and other costs (including attorneys' fees) incurred by the other party in defense of such claim or action.

20. Hiring of Personnel: OWNER may not directly hire any employee of the ENGINEER. OWNER agrees that it shall not, directly or indirectly solicit any employee of the ENGINEER from accepting employment with OWNER, affiliate companies, or competitors of ENGINEER.
21. Site Signage: The ENGINEER shall be permitted to install on the project premises an exterior sign of not more than 60 square feet for promotional purposes. The location of the sign shall be mutually agreed upon by OWNER and ENGINEER, not to be unreasonably withheld by either.
22. Means and Methods: The ENGINEER shall not have control over, charge of, or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, nor shall the ENGINEER be responsible for the constructor's failure to perform work in accordance with the contract documents.
23. Evaluation of Work: The ENGINEER shall have authority to reject work that does not conform to the contract documents, however, the ENGINEER does not have authority to stop work at any time.
24. Buried Utilities: The OWNER will be responsible for furnishing the ENGINEER information identifying the type of all underground utilities and verifying their specific locations. The

ENGINEER (or their subconsultant) will rely on this information and prepare a plan that shows the locations intended for connections with respect to assumed locations of underground utilities provided by the OWNER. The OWNER will approve of all locations of subsurface penetrations prior to them being made. The OWNER agrees to waive all claims and causes of action against the ENGINEER for damages to underground improvements. The OWNER further agrees to indemnify and hold the ENGINEER harmless from any damage, liability or cost, including reasonable attorney's fees and defense costs for any property damage, injury or economic loss arising or allegedly arising from subsurface penetrations.

25. ADA Requirements: The ENGINEER shall make a reasonable professional effort to interpret applicable ADA requirements as they apply to this project but cannot warrant or guarantee compliance due to the fact it is civil rights legislation and open to many different interpretations.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13 th , 2022	Title: Wastewater Committee
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting approval of the attached resolution to designate the representatives for the County Wastewater Committee.	
Detailed Summary & Background: Staff is requesting to update this resolution to replace the City Manager with the Deputy DPW Director as the alternate representative on the County Wastewater Committee.	
Goal/Focus Area/Action Item Addressed: N/A	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Approve the resolution appointing the DPW Director as the representative to the County Wastewater Committee and the Deputy DPW Director as the alternate representative and authorize the Clerk to sign.	
Approvals: Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☒ Communication ☐	Guest(s) Invited / Presenting: Yes ☐ No ☒
For City Clerk Use Only: Commission Action:	

City of Muskegon

RESOLUTION

DESIGNATE AUTHORIZED REPRESENTATIVE FOR MUSKEGON MUNICIPAL WASTEWATER MANAGEMENT COMMITTEE

WHEREAS, Muskegon County operates a wastewater system; and

WHEREAS, the City of Muskegon contracts with Muskegon County for wastewater treatment; and

WHEREAS, the parties served by the Muskegon County Wastewater Management System entered into a master contract in 2010 which established the Muskegon Municipal Wastewater Management Committee;

NOW, THEREFORE LET IT BE RESOLVED, that Muskegon City Commissioners designate the Public Works Director as the City's Authorized Representative to the Muskegon Municipal Wastewater Management Committee; and

That Muskegon City Commissioners designate the Deputy Public Works Director as the City's Alternate Representative to the same committee; and

That the Authorized Representative and Alternate Representative are hereby authorized to vote on the City's behalf at committee meetings.

Yeas:

Nays:

I certify that the above Resolution was adopted by the City Commission of the City of Muskegon on August 30, 2022.

BY: Ann Meisch, City Clerk

Signature

Date

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13 th , 2022	Title: Shoreline Drive Traffic Control
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to accept the bid from Give Em A Brake Safety in the amount of \$31,075.00 to provide the Traffic Control services for the Shoreline Drive Road Diet Pilot.	
Detailed Summary & Background: Staff solicited bids for traffic control services for the Shoreline Drive Road Diet project based on a split phase approach with a portion to be completed during the fall of 2022 and a second portion to be completed in the Spring/Summer of 2023. One (1) bid was received as follows: • \$31,075.0 – Give Em A Brake Safety (Grandville, MI) Staff is recommending the contract be awarded to the low bidder for the project. This bid will provide the traffic control necessary for both stages of the pilot and likely represents the largest cost aside from the traffic engineering and study components of the project. There will be at least one additional item to consider for this project which is still being developed and refined by staff. The additional item will include features that invite users to imagine future uses of the reclaimed space. Staff is still working to secure commitments and pricing for those features and anticipates having that back for discussion at a later date if the price warrants additional commission action.	
Goal/Focus Area/Action Item Addressed: Designation Community & Quality of Life / Improved Access to the Waterfront Financial Infrastructure / Decrease infrastructure burden on residents	
Amount Requested: \$31,075.00	Amount Budgeted: \$115,000 (21/22 & 22/23)
Fund(s) or Account(s): 202	Fund(s) or Account(s): 202
Recommended Motion:	

Authorize staff to accept the bid from Give Em A Brake Safety in the amount of \$31,075 to provide traffic control services in conjunction with the Shoreline Drive Road Diet Pilot.

Approvals:

Immediate Division Head ☒ Information Technology ☐

Other Division Heads ☒ Communication ☒

Guest(s) Invited / Presenting:

Yes ☐

No ☒

For City Clerk Use Only:

Commission Action:

1.5 BID TABULATION						
City of Muskegon Engineering Department			Project Engineer:	LE	Date:	6/4/2019
			Project Number:	SP		
			Project description:	Seaway Drive RR Bridge Painting		
			Engineer's Estimate:	\$	80,000.00	
Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total
1	1500001	Mobilization, Max \$8,000.00	LSUM	1		
2	7137051	X02 of 61151 - Partial Cleaning & Coating	LSUM	1		
3	7137051	X03 of 61151 - Partial Cleaning & Coating	LSUM	1		
4	8127051	Traffic Control	LSUM	1		

BID TOTAL:

BID TABULATION (as read)						
City of Muskegon Egineering Department			Project Engineer: LE		Date: 8/30/2022	
			Project Number: TBD			
			Project description: Shoreline Drive Road Diet			
					Give Em A Brake Safety	
Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total
1	N/A	Phase 1 Traffic Control	LSUM	1	\$ 11,275.00	\$ 11,275.00
2	N/A	Phase 2 Traffic Control	LSUM	1	\$ 5,550.00	\$ 5,550.00
3	N/A	Phase 3 Traffic Control	LSUM	1	\$ 14,250.00	\$ 14,250.00
					Total:	\$ 31,075.00

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13 th , 2022	Title: MDEGLE Grant Agreement
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is requesting authorization to sign the grant agreement with MDEGLE.	
Detailed Summary & Background: The City of Muskegon was awarded a \$687,000 grant from the Michigan Department of Environment, Great Lakes, and Energy (MDEGLE) through their Drinking Water Infrastructure (DWI) Program. The grant is tied to the 2023 project on Sanford Street; with the remainder of the project expenses financed through the state revolving fund programs which provide additional principal forgiveness in addition to the grant dollars awarded through the DWI program. The grant and revolving fund programs continue to help ensure we can deliver an efficient and effective capital program within our water / sewer systems. Even though the programs require additional work to meet compliance along with carrying several provisions that would otherwise be optional for the city (Buy America for Iron/Steel Components & Prevailing Wage) the grants, principal forgiveness, and financing terms available to the city through these programs have provided immense benefit. Accepting the grant will not run concurrent with our other work on Sanford Street and does not add any expenses to the City. Staff is recommending acceptance of the grant and plans to continue pursuing additional opportunities for future financing within the state programs.	
Goal/Focus Area/Action Item Addressed: Financial Infrastructure / Sustainability in financial practices and infrastructure / Take Advantage of External Revenue Sources	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Authorize staff to sign and accept the grant agreement with MDEGLE.	

Approvals:		Guest(s) Invited / Presenting:	
Immediate Division Head	☒ Information Technology	☐	Yes ☐
Other Division Heads	☒ Communication	☐	No ☒
For City Clerk Use Only:			
Commission Action:			



DRINKING WATER INFRASTRUCTURE GRANT AGREEMENT

BETWEEN THE

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY

AND **CITY OF MUSKEGON**

This Grant Agreement ("Agreement") is made between the Michigan Department of Environment, Great Lakes, and Energy (EGLE), **Finance Division** ("State"), and the **City of Muskegon** ("Grantee").

The purpose of this Agreement is to provide funding in exchange for work to be performed for the project named below. The State is authorized to provide grant assistance pursuant to **Public Act 57 of 2019**. Legislative appropriation of Funds for grant assistance is set forth in **Public Act 57 of 2019**. This Agreement is subject to the terms and conditions specified herein.

PROJECT INFORMATION:

Project Name: Water System Improvements

Project #: D7566-01

Amount of grant: \$687,000

State Funding: 100% Grant

Amount of DWSRF loan: \$1,603,000

PROJECT TOTAL: \$2,290,000

Start Date: 10/1/2019

End Date: Admin Completion of DWSRF No. 7566-01

GRANTEE CONTACT INFORMATION:

Name/Title: Mr. Leo Evans, Public Works Director

Organization: City of Muskegon

Address: 933 Terrace Street

City, State, ZIP: Muskegon MI 49440

Phone Number: (231) 724-6920

E-Mail Address: leo.evans@shorelinecity.com

Federal ID Number (Required for Federal Funding): N/A

Grantee DUNS/UEI Number (Required for Federal Funding): N/A

SIGMA Vendor Number: CV0047927

STATE'S CONTACT INFORMATION:

Name/Title: Mr. David J. Worthington, Senior Project Manager

Division/Bureau/Office: Water Infrastructure Funding and Financing Section, Finance Division

Address: 525 West Allegan

City, State, ZIP: Lansing, MI 48933

Phone Number: 517-554-1835

E-Mail Address: worthingtond@michigan.gov

The individuals signing below certify by their signatures that they are authorized to sign this Agreement on behalf of their agencies and that the parties will fulfill the terms of this Agreement, including any attached appendices, as set forth herein.

FOR THE GRANTEE:

	Leo Evans, Public Works Director	
Signature	Name/Title	Date

FOR THE STATE:

	Kelly Green, Administrator	
Signature	Name/Title	Date

I. PROJECT SCOPE

This Agreement and its appendices constitute the entire Agreement between the State and the Grantee and may be modified only by written agreement between the State and the Grantee.

(A) The scope of this project is limited to the activities specified in Appendix A and such activities as are authorized by the State under this Agreement. Any change in project scope requires prior written approval in accordance with Section III, Changes, in this Agreement.

(B) By acceptance of this Agreement, the Grantee commits to complete the project identified in Appendix A within the time period allowed for in this Agreement and in accordance with the terms and conditions of this Agreement.

II. AGREEMENT PERIOD

Upon signature by the State, the Agreement shall be effective from the Start Date until the End Date on page 1. The State shall have no responsibility to provide funding to the Grantee for project work performed except between the Start Date and the End Date specified on page 1. Expenditures made by the Grantee prior to the Start Date or after the End Date of this Agreement are not eligible for payment under this Agreement.

III. CHANGES

Any changes to this Agreement shall be requested by the Grantee or the State in writing and implemented only upon approval in writing by the State. The State reserves the right to deny requests for changes to the Agreement or to the appendices. No changes can be implemented without approval by the State.

IV. GRANTEE DELIVERABLES AND REPORTING REQUIREMENTS

The Grantee shall submit deliverables and follow reporting requirements specified in Appendix A of this Agreement.

(A) The Grantee must complete and submit financial and progress reports according to a form and format prescribed by the State and must include supporting documentation of eligible project expenses. These reports shall be submitted via the Drinking Water State Revolving Fund (DWSRF) Disbursement Request Request Form as provided by EGLE, and due according to the following:

Reporting Period	Due Date
Jan 1 – Jan 31	Feb 28
Feb 1 – Feb 28	Mar 31
Mar 1 – Mar 31	April 30
April 1 – April 30	May 31
May 1 – May 31	June 30
June 1 – June 30	July 31

July 1 – July 31	Aug 31
Aug 1 – Aug 31	Sept 30
Sept 1 – Sept 30	Before October 15*
Oct 1 – Oct 31	Nov 30
Nov 1 – Nov 30	Dec 31
Dec 1 – Dec 31	Jan 31

*Due to the State's year-end closing procedures, there will be an accelerated due date for the report covering September 1 – September 30. Advance notification regarding the due date for the period ending September 30 will be sent to the Grantee. If the Grantee is unable to submit a report in early October for the period ending September 30, an estimate of expenditures through September 30 must be submitted to allow the State to complete its accounting for that fiscal year.

The forms provided by the State shall be submitted to the State's contact at the address on page 1. All required supporting documentation (invoices, proof of payment, etc.) for expenses must be included with the report.

(B) The Grantee shall provide a final project report in a format prescribed by the State. The Grantee shall submit the final status report, including all supporting documentation for expenses, along with the final project report and any other outstanding products within 30 days of substantial completion of the project or the End Date of the Agreement.

V. GRANTEE RESPONSIBILITIES

(A) The Grantee agrees to abide by all applicable local, state, and federal laws, rules, ordinances, and regulations in the performance of this grant.

(B) All local, state, and federal permits, if required, are the responsibility of the Grantee. Award of this grant is not a guarantee of permit approval by the State.

(C) The Grantee shall be solely responsible to pay all applicable taxes and fees, if any, that arise from the Grantee's receipt or execution of this grant.

(D) The Grantee is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services submitted to the State under this Agreement. The Grantee shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in drawings, designs, specifications, reports, or other services.

(E) The State's approval of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Grantee of responsibility for the technical adequacy of the work. The State's review, approval, acceptance, or payment for any of the services shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

(F) The Grantee acknowledges that it is a crime to knowingly and willingly file false information with the State for the purpose of obtaining this Agreement or any payment under the Agreement, and that any such filing may subject the Grantee, its agents, and/or employees to criminal and civil prosecution and/or termination of the grant.

VI. USE OF MATERIAL

Unless otherwise specified in this Agreement, the Grantee may release information or material developed under this Agreement, provided it is acknowledged that the State funded all or a portion of its development.

The State, and federal awarding agency, if applicable, retains a royalty-free, nonexclusive and irrevocable right to reproduce, publish, and use in whole or in part, and authorize others to do so, any copyrightable material or research data submitted under this grant whether or not the material is copyrighted by the Grantee or another person. The Grantee will only submit materials that the State can use in accordance with this paragraph.

VII. ASSIGNABILITY

The Grantee shall not assign this Agreement or assign or delegate any of its duties or obligations under this Agreement to any other party without the prior written consent of the State. The State does not assume responsibility regarding the contractual relationships between the Grantee and any subcontractor.

VIII. SUBCONTRACTS

The State reserves the right to deny the use of any consultant, contractor, associate, or other personnel to perform any portion of the project. The Grantee is solely responsible for all contractual activities performed under this Agreement. Further, the State will consider the Grantee to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Grant. All subcontractors used by the Grantee in performing the project shall be subject to the provisions of this Agreement and shall be qualified to perform the duties required.

IX. NON-DISCRIMINATION

The Grantee shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Grantee agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant is a material breach of this Agreement.

X. UNFAIR LABOR PRACTICES

The Grantee shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*

XI. LIABILITY

(A) The Grantee, not the State, is responsible for all liabilities as a result of claims, judgments, or costs arising out of activities to be carried out by the Grantee under this Agreement, if the liability is caused by the Grantee, or any employee or agent of the Grantee acting within the scope of their employment or agency.

(B) Nothing in this Agreement should be construed as a waiver of any governmental immunity by the Grantee, the State, its agencies, or their employees as provided by statute or court decisions.

XII. CONFLICT OF INTEREST

No government employee, or member of the legislative, judicial, or executive branches, or member of the Grantee's Board of Directors, its employees, partner agencies, or their families shall benefit financially from any part of this Agreement.

XIII. ANTI-LOBBYING

If all or a portion of this Agreement is funded with federal funds, then in accordance with 2 CFR 200, as appropriate, the Grantee shall comply with the Anti-Lobbying Act, which prohibits the use of all project funds regardless of source, to engage in lobbying the state or federal government or in litigation against the State. Further, the Grantee shall require that the language of this assurance be included in the award documents of all subawards at all tiers.

If all or a portion of this Agreement is funded with state funds, then the Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of lobbying as defined in the State of Michigan's lobbying statute, MCL 4.415(2). "Lobbying" means communicating directly with an official of the executive branch of state government or an official in the legislative branch of state government for the purpose of influencing legislative or administrative action." The Grantee shall not use any of the grant funds awarded in this Agreement for the purpose of litigation against the State. Further, the Grantee shall require that language of this assurance be included in the award documents of all subawards at all tiers.

XIV. DEBARMENT AND SUSPENSION

By signing this Agreement, the Grantee certifies that it has checked the federal debarment/suspension list at www.SAM.gov to verify that its agents, and its subcontractors:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or the state.
- (2) Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection

with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, as defined in 45 CFR 1185; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- (3) Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in subsection (2).
- (4) Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- (5) Will comply with all applicable requirements of all other state or federal laws, executive orders, regulations, and policies governing this program.

XV. AUDIT AND ACCESS TO RECORDS

The State reserves the right to conduct a programmatic and financial audit of the project, and the State may withhold payment until the audit is satisfactorily completed. The Grantee will be required to maintain all pertinent records and evidence pertaining to this Agreement, including grant and any required matching funds, in accordance with generally accepted accounting principles and other procedures specified by the State. The State or any of its duly authorized representatives must have access, upon reasonable notice, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Grantee will provide proper facilities for such access and inspection. All records must be maintained for a minimum of [five] years after the final payment has been issued to the Grantee by the State.

XVI. INSURANCE

(A) The Grantee must maintain insurance or self-insurance that will protect it from claims that may arise from the Grantee's actions under this Agreement.

(B) The Grantee must comply with applicable workers' compensation laws while engaging in activities authorized under this Agreement.

XVII. OTHER SOURCES OF FUNDING

The Grantee guarantees that any claims for reimbursement made to the State under this Agreement must not be financed by any source other than the State under the terms of this Agreement. If funding is received through any other source, the Grantee agrees to delete from Grantee's billings, or to immediately refund to the State, the total amount representing such duplication of funding.

XVIII. COMPENSATION

(A) A breakdown of costs allowed under this Agreement is identified in Appendix A. The State will pay the Grantee a total amount not to exceed the amount on page 1 of this Agreement, in accordance with Appendix A, and only for expenses incurred [and paid]. All other costs necessary to complete the project are the sole responsibility of the Grantee.

(B) Expenses incurred by the Grantee prior to the Start Date or after the End Date of this Agreement are not allowed under the Agreement, [unless otherwise specified in Appendix A].

(C) The State will approve payment requests after approval of reports and related documentation as required under this Agreement.

(D) The State reserves the right to request additional information necessary to substantiate payment requests.

(E) Payments under this Agreement may be processed by Electronic Funds Transfer (EFT). The Grantee may register to receive payments by EFT at the SIGMA Vendor Self Service web site (<https://sigma.michigan.gov/webapp/PRDVSS2X1/AltSelfService>).

XIX. CLOSEOUT

(A) A determination of project completion, which may include a site inspection and an audit, shall be made by the State after the Grantee has met any match obligations, satisfactorily completed the activities, and provided products and deliverables described in Appendix A.

(B) Upon issuance of final payment from the State, the Grantee releases the State of all claims against the State arising under this Agreement. Unless otherwise provided in this Agreement or by State law, final payment under this Agreement shall not constitute a waiver of the State's claims against the Grantee.

(C) The Grantee shall immediately refund to the State any payments in excess of the costs allowed by this Agreement.

XX. CANCELLATION

This Agreement may be canceled by the State, upon 30 days written notice, due to Executive Order, budgetary reduction, other lack of funding, upon request by the Grantee, or upon mutual agreement by the State and Grantee. The State may honor requests for just and equitable compensation to the Grantee for all satisfactory and eligible work completed under this Agreement up until 30 days after written notice, upon which time all outstanding reports and documents are due to the State and the State will no longer be liable to pay the grantee for any further charges to the grant.

XXI. TERMINATION

(A) This Agreement may be terminated by the State as follows.

(1) Upon 30 days written notice to the Grantee:

a. If the Grantee fails to comply with the terms and conditions of the Agreement, or with the requirements of the authorizing legislation cited on page 1, or the rules promulgated thereunder, or other applicable law or rules.

b. If the Grantee knowingly and willingly presents false information to the State for the purpose of obtaining this Agreement or any payment under this Agreement.

- c. If the State finds that the Grantee, or any of the Grantee's agents or representatives, offered or gave gratuities, favors, or gifts of monetary value to any official, employee, or agent of the State in an attempt to secure a subcontract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Agreement.
- d. If the Grantee or any subcontractor, manufacturer, or supplier of the Grantee appears in the register of persons engaging in unfair labor practices that is compiled by the Michigan Department of Licensing and Regulatory Affairs or its successor.
- e. During the 30-day written notice period, the State shall withhold payment for any findings under subparagraphs a through d, above and the Grantee will immediately cease charging to the grant and stop earning match for the project (if applicable).

(2) Immediately and without further liability to the State if the Grantee, or any agent of the Grantee, or any agent of any subcontract is:

- a. Convicted of a criminal offense incident to the application for or performance of a State, public, or private contract or subcontract;
- b. Convicted of a criminal offense, including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;
- c. Convicted under State or federal antitrust statutes; or
- d. Convicted of any other criminal offense that, in the sole discretion of the State, reflects on the Grantee's business integrity.
- e. Added to the federal or state Suspension and Debarment list.

(B) If a grant is terminated, the State reserves the right to require the Grantee to repay all or a portion of funds received under this Agreement.

XXII. IRAN SANCTIONS ACT

By signing this Agreement the Grantee is certifying that it is not an Iran linked business, and that its contractors are not Iran linked businesses, as defined in MCL 129.312.

XXIII. DISCLOSURE OF INFORMATION

All reports and other printed or electronic material prepared by or for the Grantee under the Agreement will not be distributed without the prior written consent of the State except for items disclosed in response to a Freedom of Information Act request, Court Order or subpoena.

APPENDIX A

Project Overview: Abandonment of a redundant 6-inch diameter water main (WM) on Sanford Street (Stanford) from Laketon Avenue to Southern Avenue (Southern). All water services will be replaced and tapped to the existing 16-inch diameter WM. Replacement of an existing 6-inch diameter WM with approximately 1,283 linear feet (LF) of 8-inch diameter WM on Sanford from Southern to Morrall Avenue. Replacement of 124 LF of 16-inch diameter WM at the Southern/Sanford intersection. Replacement of approximately 116 LF of 6-inch diameter WM at the Apple Avenue and Sanford intersection. All water services will be replaced up to the meter inside the building, or to 18 inches inside the building, along Sanford from Laketon to Apple.

EGLE approved estimated project costs include:

Task	Budget
Planning Costs	\$0
Rate Methodology Development Costs	\$0
Design Engineering Costs	\$81,581
Legal/Financial Service Fees	\$34,325
Administrative Costs	\$551
Bond Counsel Fees	\$24,500
Bond Advertisement Costs	\$2,500
Bid Advertisement Costs	\$0
Capitalized Interest	\$0
Land Acquisition/Relocation Costs	\$0
Land Purchase Costs	\$0
Construction Engineering Costs	\$133,513
Construction Costs (bid contracts)	\$1,884,179
Construction Costs (force account)	\$0
Equipment Costs	\$0
Other Project Costs (Additional Contingency)	38,000
Contingencies	90,851
DWSRF-Eligible Project Cost Subtotal ⁽¹⁾	\$2,290,000
DWSRF Loan No. 7566-01 Amount	(\$1,603,000)
Total Grant Amount*	\$687,000

*A DWSRF applicant is eligible for the lesser of 30 percent of the DWSRF-Eligible Project Cost Subtotal⁽¹⁾ or \$2,000,000.

The following services have been determined to be ineligible for Grant assistance, for the reasons listed, and have been excluded from the approved project costs shown above: Additional utility/road improvements on Sanford Street to be funded by the CWSRF and/or outside the scope of the DWSRF project.

Program-specific Requirements:

The Drinking Water Infrastructure (DWI) grant provides assistance related to DWSRF Loan No. 7566-01. Therefore, the requirements for the DWSRF loan apply to the DWI grant; reference the conditions in the loan documents.

The project scope for the DWI grant and the DWSRF loan are the same; eligible project costs will be disbursed for the DWI grant until those awarded funds are exhausted, and the remainder of the eligible project costs will be financed through the DWSRF loan, up to the Order of Approval (OOA) amount. Applicants will ensure there is no overlap in funding/financing sources when requesting reimbursement.

By signing this Agreement, the Grantee attests that the project funded through this DWI grant is included in the Grantee's community asset management plan.

Grant Administration and Close Out:

As mentioned previously, in Section IV, GRANTEE DELIVERABLES AND REPORTING REQUIREMENTS, the Grantee must complete and submit financial and progress reports and must include supporting documentation of eligible project expenses. Reports shall include the DWSRF Disbursement Request Form with supporting cost documentation (i.e. vendor invoices), a report including a brief description of work completed during the reporting period, and any delays occurred or anticipated. Reports shall be due within 30 days of the end of each monthly reporting period. If applicant chooses not to submit reimbursement requests monthly, the EGLE project manager must be notified that no submission will be completed for the month.

The Grantee will submit for reimbursement on the DWSRF Disbursement Request Form, and EGLE will convert it to the standard grant Financial Status Report Form for internal processing purposes.

The Grantee must provide a final project report, which shall include a summary of work completed utilizing grant funds. The Grantee shall submit the final status report, including the DWSRF Disbursement Request Form with all supporting documentation for expenses, along with the final project report and any other outstanding products within 30 days of substantial completion of the grant-funded portion of the project or the end date of the agreement whichever occurs first.

The DWI grant end date will correspond with the Administrative Completion of DWSRF Loan No. 7566-01. Therefore, the DWI grant is considered Administratively Complete when the DWSRF loan is. If the final DWSRF loan amount is less than the OOA amount, the grantee may be required to pay back a portion of the grant, within 90 days of being informed to do so, as the eligible DWI grant amount is the lesser of 30 percent of the DWSRF-Eligible Project Cost Subtotal or \$2,000,000.

Grant information including grantee name, grant award amount, and a project summary will be shared with the legislature and posted on EGLE's website.

If you need this information in an alternate format, contact EGLE-Accessibility@Michigan.gov or call 800-662-9278.

EGLE does not discriminate on the basis of race, sex, religion, age, national origin, color, marital status, disability, political beliefs, height, weight, genetic information, or sexual orientation in the administration of any of its programs or activities, and prohibits intimidation and retaliation, as required by applicable laws and regulations. Questions or concerns should be directed to the Nondiscrimination Compliance Coordinator at EGLE-NondiscriminationCC@Michigan.gov or 517-249-0906.

This form and its contents are subject to the Freedom of Information Act and may be released to the public.

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 9/13/2022		Title: Back Hoe Purchase
Submitted By: Joe Buckingham		Department: Equipment
Brief Summary: Back Hoe Purchase from Michigan Cat. The Mi Deal State contract holder for a price of 121,000.00.		
Detailed Summary & Background: The Equipment Div. is seeking permission to purchase one new Back Hoe from Michigan Caterpillar the Mi-Deal State contract holder for a price of 121,000.00 coming from the 2022/23 budget. This back hoe will replace one of our older machines.		
Amount Requested: \$121,000.00	Amount Budgeted: \$121,000.00	
Fund(s) or Account(s): Equipment Acct.	Fund(s) or Account(s):	
Recommended Motion: Approve Equipment Division to proceed with purchase.		
Approvals: <i>Get approval from division head at a minimum prior to sending to the Clerk.</i> Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☒ Communication ☐		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		



WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 9/13/22		Title: Rezoning of 2043, 2051, 2065 and 2075 Dowd to Form Based Code, Urban Residential
Submitted By: Mike Franzak		Department: Planning
Brief Summary: Staff-initiated request to rezone the properties at 2043, 2051, 2065 and 2075 Dowd St from R-3, High Density Single Family Residential to Form Based Code, Urban Residential.		
Detailed Summary & Background: Staff is in discussions with a developer that is requesting to build duplexes on the lots. These properties are located about 600 feet north of the duplexes currently being constructed at the corner of Hackley/Dowd. Those properties were approved for a rezoning in 2021. There are also large apartment complexes located just to the southwest of these parcels. The Planning Commission recommended approval of the rezoning by a 5-0 vote at their August 11 meeting.		
Goal/Focus Area/Action Item Addressed: <i>Goal 2: Economic Development, Housing and Business. Focus Area: Diverse Housing Types. Action Item 2.5: Increase variety of Housing Types.</i>		
Amount Requested:	Amount Budgeted:	
Fund(s) or Account(s):	Fund(s) or Account(s):	
Recommended Motion: To approve the request to rezone the properties at 2043, 2051, 2065 and 2075 Dowd St from R-3, High Density Single Family Residential to Form Based Code, Urban Residential.		
Approvals: Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☐ Communication ☐ Legal Review ☐		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only:		

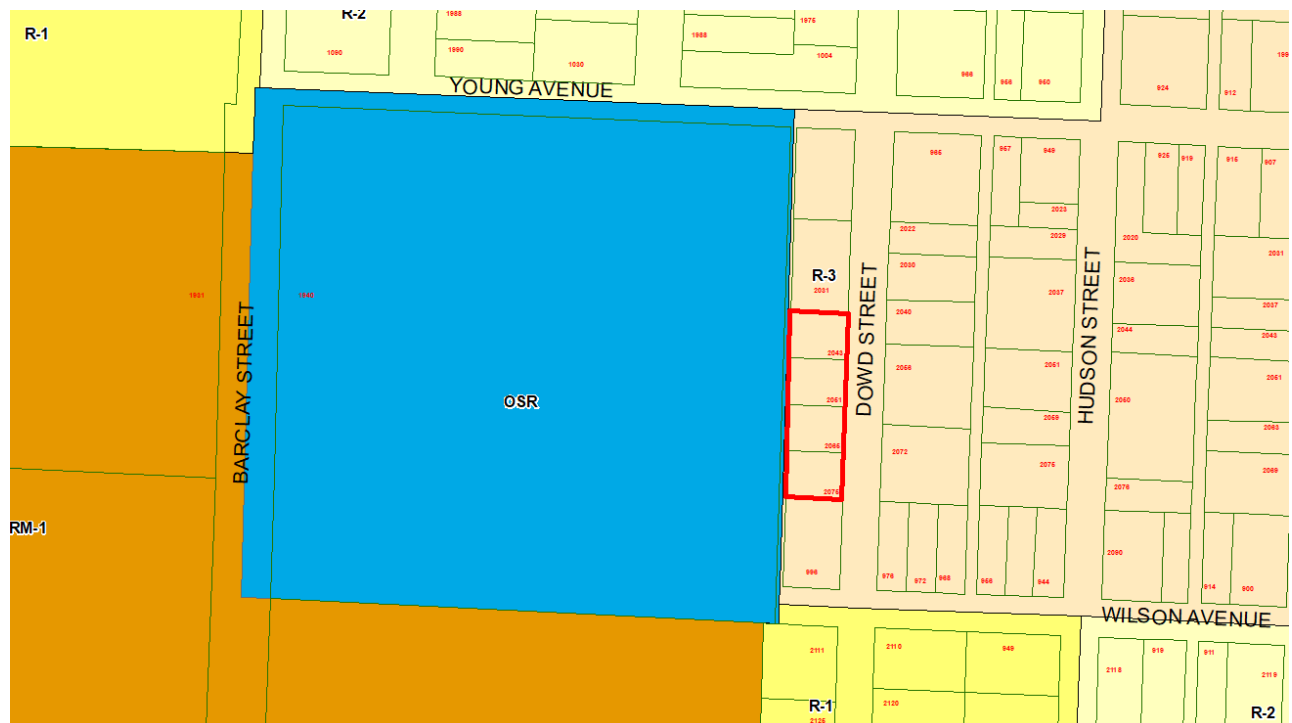
Commission Action:

Planning Commission Excerpt:

SUMMARY

1. The City owns the vacant lots at 2043, 2051, 2065 and 2075 Dowd, which are currently zoned R-3, High Density Single Family Residential.
2. The lots each measure 61.8' x 75' and are located behind Campbell Playground.
3. The FBC-UR designation would allow for single-family houses, rowhouses, duplexes, and small multiplexes (3-4 units). The city is currently working with a developer that would like to construct duplexes on site.
4. These properties are located about 600 feet north of the duplexes currently being constructed at the corner of Hackley/Dowd. Those properties were approved for a rezoning in 2021. There are also large apartment complexes located just to the southwest of these parcels.
5. Notice was sent to all properties within 300 feet. At the time of this writing, staff had not received any comments from the public.

Zoning Map



Aerial Map



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 2043, 2051, 2065 and 2075 Dowd St from R-1 to FBC, UR

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 2043, 2051, 2065 and 2075 Dowd St from R-3 to FBC, UR.

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 485

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 486

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 487

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 488

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC

City Clerk

CERTIFICATE (Rezoning 2043, 2051, 2065 and 2075 Dowd St from R-3 to FBC-UR)

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 13th day of September 2022, 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: _____, 2022 _____

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 13, 2022, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for 2043, 2051, 2065 and 2075 Dowd St from R-1 to FBC-UR:

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 485

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 486

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 487

CITY OF MUSKEGON ORCHARD GROVE ADDITION LOT 488

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 _____, 2022

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 13, 2022		Title: US Army Corps of Engineers Lease	
Submitted By: LeighAnn Mikesell		Department: City Manager	
Brief Summary: Staff is requesting approval to renew the lease with the US Army Corps of Engineers for use of the navigation structures at the Muskegon Harbor Federal Navigation Project.			
Detailed Summary & Background: The lease would authorize the continuation of passive recreational activities on the US South Breakwater, the US South Revetment and Pier, and allow for the operation and maintenance of pier safety devices on the US North and South Breakwaters.			
Goal/Focus Area/Action Item Addressed: Goal 1 – Destination Community & Quality of Life, Key Focus Area: Improved access to the waterfront			
Amount Requested: N/A		Amount Budgeted: N/A	
Fund(s) or Account(s):		Fund(s) or Account(s):	
Recommended Motion: to approve the lease renewal with the US Army Corps of Engineers and authorize the mayor and clerk to sign.			
Approvals:		Guest(s) Invited / Presenting	
Immediate Division Head	☐	Information Technology	☐
Other Division Heads	☒	Communication	☐
Legal Review	☒		
		Yes	☐
		No	☒
For City Clerk Use Only: Commission Action:			



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, DETROIT DISTRICT
477 MICHIGAN AVENUE
DETROIT MI 48226-2550

June 3, 2022

Real Estate Office

LeighAnn Mikesell
Interim City Manager
City of Muskegon
933 Terrace Street
Muskegon, Michigan 49440

Dear Ms. Mikesell,

Reference is made with prior discussions with Mr. Leo Evans (in the City's Public Works and Engineering Office) regarding the renewal of a Park and Recreation lease for public use of the Navigation Structures at the Muskegon Harbor Federal Navigation Project. The lease would authorize the continuation of passive recreational activities on the U.S. South Breakwater, the U.S. South Revetment and Pier, in addition to the operation and maintenance of pier safety devices on the U. S. North and South Breakwaters.

In accord with the Development and Management Plan which Mr. Evans had previously submitted, we have generated and attached a copy of Department of the Army Park and Recreation Lease No.DACW35-1-16-3003. Also attached is a Certificate of Authority. Please sign, date, and return a scanned copy of the lease, and complete and return a scanned copy the Certificate of Authority.

Please note that Exhibit "C" of the lease contains an Environmental Condition of Property (ECP) document with a Statement of Findings, which concludes that there is no evidence that hazardous substances have been disposed of or released at the site. Along with the lease, the ECP requires a signature and date. The electronic copy of the lease with ECP is for your records until a fully executed copy is returned to you by e-mail and regular mail.

In compliance with Condition No. 16, please provide this office with a Certificate of Liability Insurance or an updated statement of self-insurance. This may be sent by e-mail to my attention or by regular mail. Lease No. DACW35-1-16-3003 must appear on all insurance documents submitted annually.

By authority of the Defense Authorization Act of 1998, Section 2813(a), the United States is required to charge a fee to cover the administrative expenses associated with the processing and management of this lease. The administrative fee is **nine thousand four hundred and no/100 dollars (\$9,400.00)**. Please submit a check according to the instructions in Condition No. 2b of the lease.

If you have any questions, please contact Shawn Sanchez by e-mail at Shawn.S.Sanchez@usace.army.mil or by phone at (313) 226-1326.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Jameson". The signature is fluid and cursive, with the first name "Robert" and last name "Jameson" clearly distinguishable.

Robert Jameson
Property Management
Real Estate Office
Buffalo, Chicago, and Detroit Districts

Enclosures

Copy Furnished (via e-mail):

City of Muskegon, Public Works/Engineering: Mr. Leo Evans, PE (leo.evans@shorelinecity.com)

NOTE: The CERTIFICATE OF AUTHORITY must be executed by an individual other than by the person who signed the agreement. The individual must certify that the official who signed the agreement was authorized to act in that capacity.

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the
(someone other than the person signing the agreement)

_____ for the
(my position of responsibility within the organization)

City of Muskegon, Michigan (Lessee) and that

_____, who signed the agreement

on behalf of the Lessee was at the time of signature

its _____, and that person
(position held)

who executed the agreement on behalf of the Lessee acted

within his/her statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification

this _____ day of _____, _____.

(Signature)

**DEPARTMENT OF THE ARMY
LEASE TO NON-STATE GOVERNMENTAL AGENCIES
FOR PUBLIC PARK AND RECREATIONAL PURPOSES AT THE
MUSKEGON HARBOR FEDERAL NAVIGATION PROJECT
MUSKEGON COUNTY, MICHIGAN**

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and the **CITY OF MUSKEGON, MICHIGAN**, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s), attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of twenty-five (25) years, beginning on 1 October 2016 and ending on 30 September 2041.

2. CONSIDERATION AND ADMINISTRATIVE FEE

a. The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

b. By authority of the Defense Authorization Act of 1998, Section 2813a (10 U.S.C. § 2695), the United States is required to charge a fee to cover the administrative expenses associated with the processing of a lease. The required administrative fee for the processing of this lease is nine thousand four hundred and no/100 dollars (\$9,400.00). The administrative fee must be paid by check, in advance, payable to the order of "FAO, USAED, Detroit" and is to be mailed to the U.S. Army Engineer District, Detroit, ATTN: Real Estate Office, 477 Michigan Avenue, Detroit, Michigan 48226-2550. Lease number DACW35-1-16-3003 must be referenced on the check document.

c. The Lessee is required to register, while remaining up to date and valid, in the System Award Management (SAM) database to perform financial transactions with the U.S. Government. SAM registration should occur prior to the submittal of this agreement, and prior to the submittal of any applicable administrative fees and/or payments being made. The SAM database is an official Federal government website administered by the U.S. General Services Administration. There is no cost to use the SAM database. If you have any general questions about the SAM database, please contact Ms. Tarsus Moore with

the U.S. Army Corps of Engineers (USACE), Detroit District, Resource Management Office, by e-mail at Tarsus.B.Moore@usace.army.mil or by phone at (313) 226-6832. The SAM database can be found at the following website address: <https://www.sam.gov>

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to the City of Muskegon, 933 Terrace Street, Muskegon, Michigan, 49440; and, if to the United States, to the U.S. Army Engineer District, Detroit, ATTN: Real Estate Office, 477 Michigan Avenue, Detroit, Michigan, 48226 or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. DEVELOPMENT PLANS

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as "Exhibit B" which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes to the original plan or management of the leased premises. Amendments to the plan shall include, but is not limited to the following:

- a. Plans for management, maintenance, and development activities to be undertaken by the Lessee and any sublessees.
- b. Report of the management, maintenance, and development accomplishments of the Lessee for the preceding year.
- c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.
- d. Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to

implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state, and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

6. STRUCTURES AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized.

Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**. However, no structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

7. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with

Federal, State, and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disability Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

8. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

9. FACILITIES AND SERVICES

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on DEVELOPMENT PLANS either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

10. TRANSFERS, ASSIGNMENTS, SUBLEASES

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

11. FEES

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if prohibited by 16 U.S.C. § 460d-3.

12. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

13. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

14. RIGHT TO ENTER AND FLOOD

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government

purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. The Lessee expressly agrees to make no claim under flood insurance issued under any Federal Government program for loss to any property of the Lessee located on the premises which arises from or is incident to the flooding of the premises by the Government.

15. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

16. INSURANCE

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain liability insurance from a reputable insurance company or companies' contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$2,000,000.00, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this lease. On an annual basis, the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be

given thirty (30) days' notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

e. Lease No. DACW35-1-16-3003 must appear on all insurance related documents submitted annually.

17. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CAR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

20. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the

lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

22. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

23. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

24. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c.(2) below.

c.(1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3)

(i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Lessee's location involved; or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer

received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions, or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

28. ENVIRONMENTAL CONDITION OF PROPERTY

An Environmental Condition of Property (ECP) documents the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as "**Exhibit C**". Upon expiration, revocation or termination of this lease, another ECP shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

29. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

30. SOIL AND WATER CONSERVATION

The Lessee shall maintain in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

32. COVENANT AGAINST CONTINGENT FEE

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

33. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

34. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army Regulatory Permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344)

36. SPECIAL PROVISIONS

a. This lease is for continued public park and recreational activities at the Muskegon Harbor Federal Navigation Project, Michigan. The recreational activities on the premises authorizes the public to use the U.S. South Breakwater, the U.S. South Revetment and U.S. South Pier for passive recreation, including the viewing of the waterway, bird watching and general enjoyment of the environment. To support these activities, various improvements have been installed on the premises, which include benches, informational signs, a portion of a picnic/viewing shelter, trash containers and the interconnection of walkways and pathways from two city parks to the USACE Navigation Structures. In addition, the Lessee operates and maintains pier safety devices consisting of life rings, call boxes, signs and related appurtenances on the U.S. North and South Breakwaters.

b. All construction and activities on the premises, including the plans and specifications for all structures must be coordinated with and approved by the USACE Grand Haven Resident Office. The point-of-contact for coordination is Elizabeth Wilkinson, Resident Engineer (telephone 616-240-7989) and can also be reached by email at elizabeth.n.wilkinson@usace.army.mil. This review is required to ensure that the Lessee's activities and use of the site is consistent with the purpose and integrity of the Muskegon Harbor Federal Navigation Project, and is not intended as a detailed engineering review. The Federal government assumes no responsibility or liability for the technical sufficiency of the Lessee's plans or construction."

c. The Lessee will remove a monument provided by the Louis and Ann Eklund Foundation, which had been previously located near the center of the U.S. South Breakwater. If the Lessee intends to display the monument on the U.S. South Breakwater again in the future, the placement, location, and construction would require coordination with and approval by USACE as outlined in Condition No. 36b.

d. The Lessee is authorized to construct, operate, and maintain pier safety devices, such as life rings, call boxes, lights, and control systems on both the U.S. North and South Breakwaters. Appropriate safety measures must be employed during all work or maintenance activities performed by the Lessee.

e. Through a Letter of Permission, dated 23 July 2007, the following condition has been made part of the Lease: The City of Muskegon has been given the right to manage the U.S. Government Moorage Basin along the U.S. South Revetment. This includes the

moorage of the USS Silversides and the USCGC McLane. The Great Lakes Naval Memorial and Museum, located on the adjacent non-Federal property, is managed through an agreement between the museum and the City of Muskegon.

f. Through the terms under Department of the Army Real Estate Permit No. DACW35-4-01-3003 issued to National Oceanic and Atmospheric Administration (NOAA), the Secretary has authorized the moorage of NOAA's vessels along the western side of the U.S. Moorage Basin.

g. The Lessee's activities must not degrade the condition of the premises or cause a situation that would interfere with the operations and maintenance of the Federal project, including the access to the USACE Navigation Structures.

h. The premises shall be routinely maintained in good order and in a clean and safe condition for public usage. All debris and litter must be picked up following events, concerts, and public gatherings.

i. This lease (DACW35-1-16-3003) supersedes the former Department of the Army Lease (DACW35-1-91-3004), which was valid from 1 October 1991 through 30 September 2016.

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of
the Secretary of the Army this _____ day of _____
, _____ .

CITY OF MUSKEGON, MICHIGAN

(signature)

(printed name)

(title)

(date)

BY AUTHORITY OF THE
SECRETARY OF THE ARMY

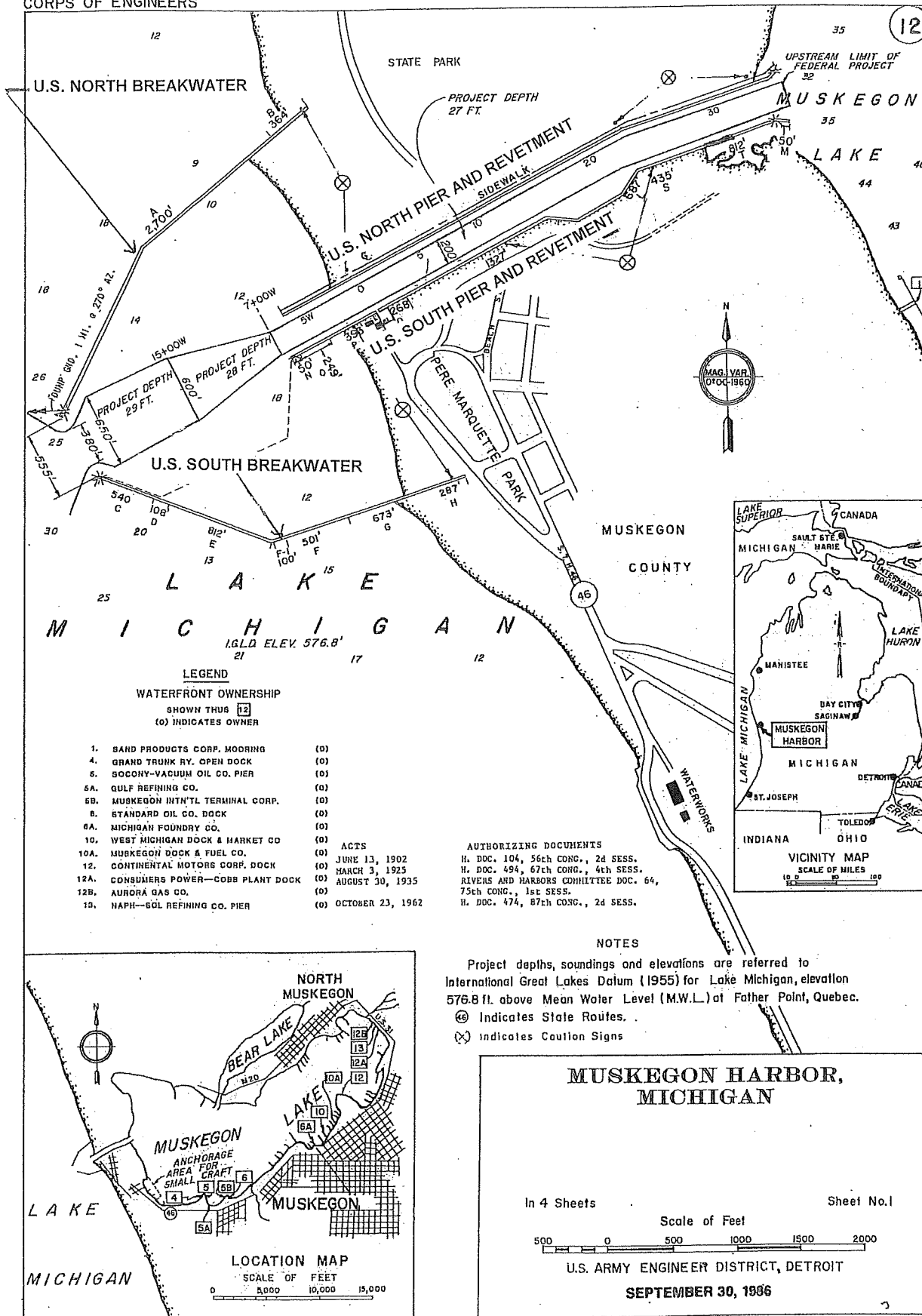
Michael B. Rohde
Chief, Real Estate
Real Estate Contracting Officer
Buffalo, Chicago, and Detroit Districts



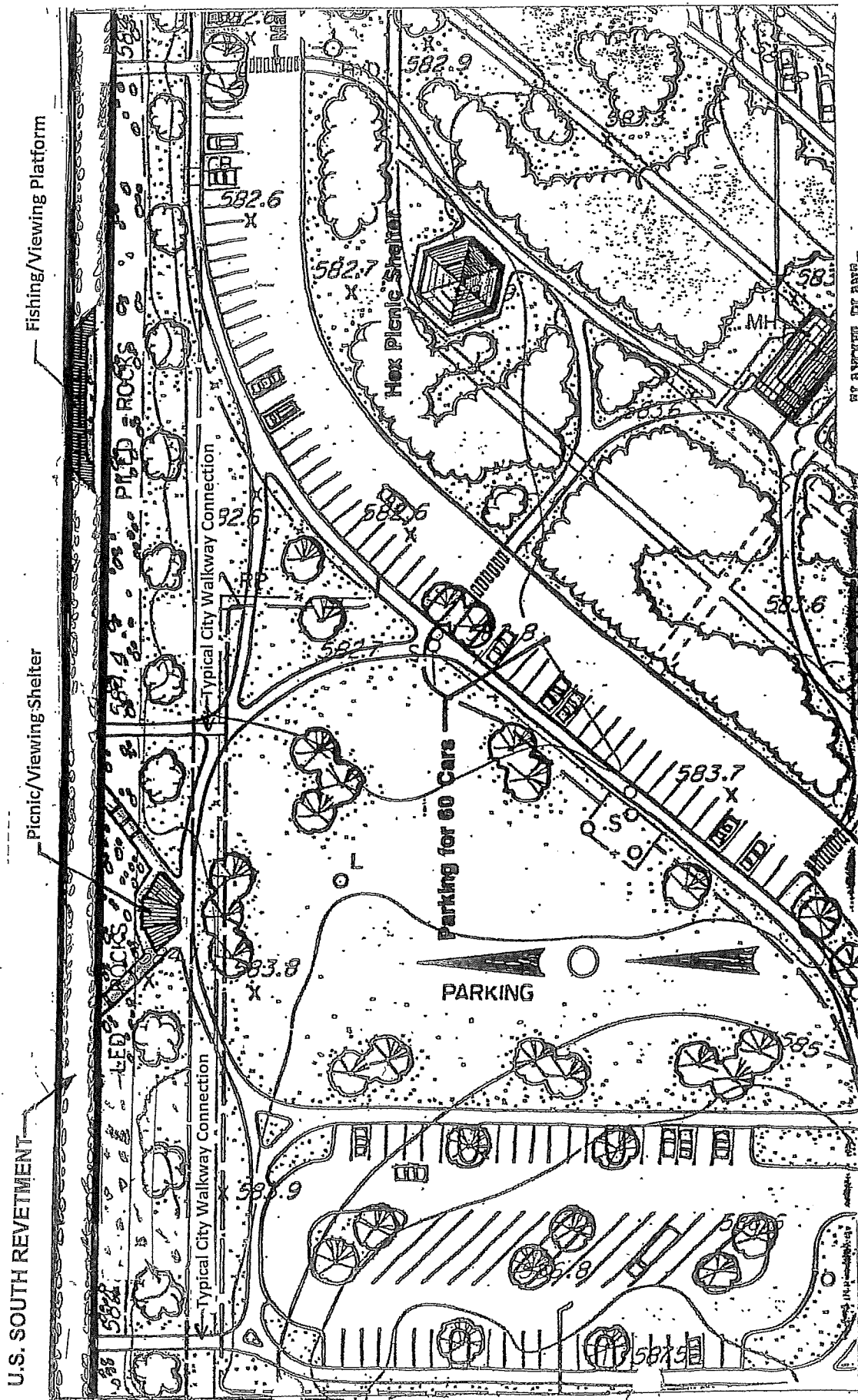
MUSKEGON HARBOR
FEDERAL NAVIGATION PROJECT

EXHIBIT "A"
(SHEET 1 OF 3)

CORPS OF ENGINEERS



MUSKEGON HARBOR FEDERAL NAVIGATION CHANNEL



"FLAVOIT PLAN"
 PICNIC/VIEWING SHELTER
 AND FISHING/VIEWING
 PLATFORM FOR PIER
 MARQUETTE PARK
 MUSKEGON HARBOR, MI

Affirmative Action
(231)724-6703
FAX (231)722-1214

Assessor/
Equalization Co.
(231)724-6386
FAX (231)724-1129

Cemetery/Forestry
(231)724-6783
FAX (231)724-4188

City Manager
(231)724-6724
FAX (231)722-1214

Clerk
(231)724-6705
FAX (231)724-4178

Comm. & Neigh.
Services
(231)724-6717
FAX (231)726-2501

Computer Info.
Technology
(231)724-4126
FAX (231)722-4301

Engineering
(231)724-6707
FAX (231)727-6904

Finance
(231)724-6713
FAX (231)726-2325

Fire Department
(231)724-6795
FAX (231)724-6985

Human Resources
Co. (Civil Service)
(231)724-6442
FAX (231)724-6840

Income Tax
(231)724-6770
FAX (231)724-6768

Mayor's Office
(231)724-6701
FAX (231)722-1214

Planning/Zoning
(231)724-6702
FAX (231)724-6790

Police Department
(231)724-6750
FAX (231)722-5140

Public Works
(231)724-4100
FAX (231)722-4188

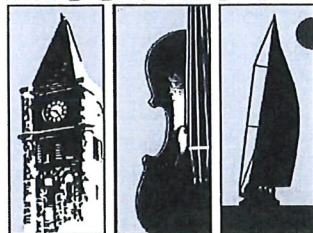
SafeBuilt
(Inspections)
(231)724-6715
FAX (231)728-4371

Treasurer
(231)724-6720
FAX (231)724-6768

Water Billing
(231)724-6718
FAX (231)724-6768

Water Filtration
(231)724-4106
FAX (231)755-5290

MUSKEGON



West Michigan's Shoreline City
www.shorelinecity.com

PLAN OF RECREATION DEVELOPMENT AND MANAGEMENT

CITY OF MUSKEGON – PERE MARQUETTE PARK

Current Development

- South Revetment "Channel Walkway" (length approx. 3,880 FT)
- South Breakwater "South Arm" (length approx. 3,020 FT)
- North Breakwater "North Arm" (length approx.. 3,060 FT)

The leased area, including three (3) independent structures, The South Revetment and The South Breakwater of the Muskegon Harbor Federal Navigation Project, share public use management objectives. The public is authorized to use the U.S. South Breakwater and South Revetment for passive recreation, including the viewing of the waterway, bird watching and general enjoyment of the environment. The U.S. North Breakwater is not intended for public use and the lease agreement covers the installation, operation and maintenance of life saving equipment on the structure that is maintained by the lessee.

Both south structures are adjoining the City of Muskegon public park space (area approx. 27.5 acres). The adjacent public park space contains areas for parking, picnicking, restrooms, playgrounds, and public beach access. Access walkways were previously established, connecting public park space to both leased structures.

The north structure is adjoined by Muskegon State Park which maintains a separate recreation development and management plan with the USACE.

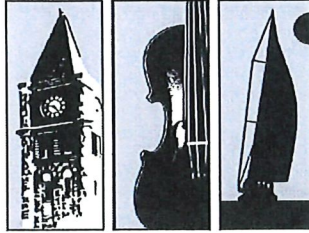
Existing Improvements

To support the public use activities various improvements have been installed on the premises, which include benches, information signs, a portion of a picnic/viewing shelter, trash containers and the interconnecting walkways and pathways from the adjacent city parks. In addition the City of Muskegon operates and maintains pier safety devices consisting of life rings, call boxes, signs and related appurtenances on the U.S. South Breakwater and pier lighting devices on the U.S. North Breakwater.

Further the City of Muskegon has been given the right to manage the U.S. Government Moorage Basin along the U.S. South Revetment at the Harbor. This includes the moorage of the USS Silversides and the USCGC McLane. The Great Lakes Naval Memorial and Museum, located on the adjacent non-Federal property, is managed through an agreement between the Museum and the City of Muskegon.

EXHIBIT "B"
(Sheet 1 of 2)

MUSKEGON



West Michigan's Shoreline City
www.shorelinecity.com

Future Developments

The City of Muskegon will continue to manage the adjacent park properties in accordance with their Master Plan. Several improvements are possible in future years on the adjacent city owned park land. No future developments are currently planned for the two structures.

Maintenance Responsibilities

The lease will authorize the continued construction, operation, and maintenance of the devices listed above on all three structures.

The City will remove a monument provided by the Louis and Ann Eklund Foundation, which had been currently placed near the center of the U.S. South Breakwater to facilitate a construction project. There is a possibility to continue to display the monument after the project is completed, with the placement location and construction coordinated with the Corps of Engineers Lake Michigan Area Office.

The City of Muskegon Parks Department maintains the park areas adjacent to the south structures throughout the year, with additional seasonal employees hired specifically for the park during the summer months. Maintenance includes-litter pick up, emptying of trash containers, sand management, as well as the general minor maintenance needs of the park.

Duration of Operation & Supervision

Pere Marquette Park and Margaret Drake Elliot Park are adjacent to the southern structures and are open from 5:00 a.m. to 11:00 p.m. daily throughout the year. City of Muskegon police assists in the enforcement of City ordinances and park rules and regulations in these areas.

EXHIBIT "B"
(Sheet 2 of 2)

**ENVIRONMENTAL CONDITION OF PROPERTY
STATEMENT OF FINDINGS (SOF)**

- 1. Real Property Transaction:** A Department of the Army Lease with the City of Muskegon, Michigan, for continued park and recreational use of Federal property under the administrative jurisdiction of the Department of the Army at the Muskegon Harbor Navigation Project. The proposed lease is described in the first paragraph of the attached Environmental Condition of Property (ECP).
- 2. Purpose:** The ECP is a record documenting the history of the property with regard to the storage, release, or disposal of hazardous substances on the property. It establishes the levels and types of hazardous substances, if found, on the site at the time of conveyance.
- 3. Summary:** An ECP report, consisting of a comprehensive records search and review of photos was performed for the proposed lease. Real estate records, including previous utilization and compliance inspection reports, and all environmental reports at the site were reviewed. The data obtained during this review is summarized on the attached ECP.
- 4. Findings:** There is no evidence that this site has experienced the disposal or release of hazardous substances. In addition, there is no evidence that the "threshold" for reporting the storage of hazardous substances has been exceeded.



Andrew M. Shelton
Chief, Technical Branch
Real Estate Contracting Officer
Buffalo, Chicago, and Detroit Districts

6/2/22
(date)

I concur with the Environmental Findings of the attached ECP.

CITY OF MUSKEGON, MICHIGAN

BY: _____
(signature and date)

(printed name and title)

**ENVIRONMENTAL CONDITION OF PROPERTY (ECP)
FOR THE PROPOSED REAL ESTATE LEASE**

1. Proposed Outgrant Action:

The proposed lease renewal is for continued public park and recreational activities at the Muskegon Harbor Federal Navigation Project, Michigan. The recreational activities on the premises include the U.S. South Breakwater and Revetment. The public is authorized to use the Federal navigation structures for passive recreation, including the viewing of the waterway, bird watching and general enjoyment of the environment. To support these activities, various improvements have been installed on the premises, which include benches, informational signs, a portion of a picnic/viewing shelter, trash containers and the interconnection of walkways and pathways from two city parks to the Federal Navigation Structures. In addition, the Lessee operates and maintains pier safety devices consisting of life rings, call boxes, signs and related appurtenances on the U.S. North and South Breakwaters.

The City of Muskegon manages the U.S. Government Mooring Basin along the U.S. South Revetment which includes moorage of the USS Silversides and the USCGC McClane. The Great Lakes Naval Memorial and Museum, located on the adjacent non-Federal property, is managed through an agreement between the Museum and the City.

2. A Records Search (included a review of the following):

- a. Executive Order Report (E.O. 12512 Report), GSA Control #9600-09830. 1 April 1991
- b. Muskegon Harbor, Detailed Utilization Report, U.S. Army Corps of Engineers, September 1996.
- c. Report of Compliance, Inspection of Army and Air Force Property Occupied Under Lease, License, Easement or Permit, 30 September 1986.
- d. Audited Real Estate Property Maps of September 1929, 15 October 1936, 1 January 1943.
- e. "Federal Owned Land at the U.S. South Breakwater Connector." Informational Audit and Recommendations, Real Estate Offices, 12 May 2016.
- f. Environmental Assessment, Maintenance of Existing Structures, Detroit District Corps of Engineers, August 1978.
- g. Design Memo, Rehabilitation of South Breakwater, Detroit District Corps of Engineers, February 1983
- h. Environmental Assessment, Rehabilitation of North and South Breakwaters, Detroit District Corps of Engineers, June 1984.

- i. Preliminary Assessment Screening and Availability Report, Detroit District, 3 June 1992.
- j. Programmatic Agreement between the United States Army Corps of Engineers, Detroit District and the Michigan State Historic Preservation Officer Regarding the Operation and Maintenance of Federal Navigation Structures, Michigan. 9 Jan 18

3. Review of Photos and Site/Utilization Inspections:

- a. 56 CE-M, 3-26 thru 3-28, taken 17 August 1984
- b. MDNR 24-287 thru 24-289, taken 7 April 1988
- c. JZS 8 thru 14, taken April 1988
- d. Aerial Photos using Bing Maps and Google Maps were both reviewed on March 5, 2013 and on August 19, 2013.
- e. Aerial photos using Bing Maps and Google Maps were both reviewed on May 6, 2015.
- f. Available historical aerial photos (from 1992-2016) were also viewed using Google Earth on the same date.
- g. Ground photos were taken by Real Estate personnel during site/utilization inspections on the following:
 - (1) 28 November 2001
 - (2) 25 August 2003
 - (3) 18 July 2006
 - (4) 21 Sept 2009
 - (5) 6 May 2010
 - (6) 30 July 2015
 - (7) 11 July 2018
 - (8) 1 June 2019

4. Based on a record search, review of aerial photos, site inspection and knowledge of the project area, the following information is provided:

a. General Site Information:

Muskegon Harbor is the largest port on the eastern shore of Lake Michigan. The harbor is located at the entrance channel to Muskegon Lake. Muskegon is an industrial center and handler of many diversified goods, including overseas cargo, and has become one of Western Michigan's gateway to the trade centers of the world. Muskegon is directly east across Lake Michigan from Milwaukee, Wisconsin. Recreational boating and tourism are also major sources of income for the local economy.

b. Current Use and Site History:

The mission and purpose of the Muskegon Harbor Project is commercial navigation on the Great Lakes and connecting channels (Navigable Waters of the United States). The Muskegon Harbor Project is adopted by various Rivers and Harbors Acts from 13 June 1902 through 23 October 1962. The project provides an exterior basin in Lake Michigan protected by two converging breakwaters with shore connections. The south and north breakwaters are 3,075 and 3,064 feet in total length, respectively. Revetment, inner piers and navigational channel extending from Muskegon Lake into Lake Michigan, and a mooring basin are also provided.

Land Use: There is a total of 8.93 fee acres, 9.741 acres of perpetual easement area, and a 0.73 acre special use area located at the project.

The proposed lease renewal is for continued public park and recreational activities on the U.S. South Breakwater and Revetment, the U.S. North Breakwater, and a small tract of Federal fee land adjacent to the U.S. South Breakwater. The public is authorized to use the Federal navigation structures for passive recreation, including the viewing of the waterway, bird watching and general enjoyment of the environment. To support these activities, various improvements have been installed on the premises, which include benches, informational signs, a portion of a picnic/viewing shelter, trash containers and the interconnection of walkways and pathways from two city parks to the Federal Navigation Structures

The Lessee operates and maintains pier safety devices consisting of life rings, call boxes, signs and related appurtenances on the North and South U.S. Breakwaters.

In addition, on the North Side of the Navigation Project, the Corps of Engineers has authorized the State of Michigan Department of Natural Resources to use and occupy approximately 1.78 acres of Federal property for public park and recreational purposes along the North Revetment. The current lease (W911XK-1-13-3001) authorized the continuation of the former Park and Recreation Lease and to documents the updated improvements in the Lease along Corps' property and structures.

5. Environmental Findings:

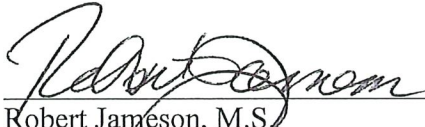
There is no evidence that this property has been a site of disposal or release of any hazardous substance(s). In addition, there is no evidence that the "threshold" for reporting the storage of hazardous substances has been exceeded.

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Date: 2019.11.26 16:35:25 -05'00'

Charles A. Uhlarik (date)
Chief, Environmental Analysis Branch
Detroit District

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Date: 2019.11.27 08:28:20
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Robert L. Stanick (date)
Area Engineer
Lake Michigan Area Office
Detroit District

 Nov 29, 2019
(date)
Robert Jameson, M.S.
Realty Specialist
Real Estate Office
Buffalo, Chicago and Detroit Districts

 Nov 27, 2019
(date)
Shawn S. Sanchez, M.S.
Realty Specialist
Real Estate Division
Buffalo, Chicago and Detroit Districts

Exhibit "C"

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13, 2022		Title: Juneteenth Holiday
Submitted By: LeighAnn Mikesell		Department: City Manager
Brief Summary: Staff is seeking approval to add the federally recognized Juneteenth holiday as a recognized holiday for all city staff starting in 2023.		
Detailed Summary & Background: The holiday will be observed on the same date as the federal Juneteenth holiday each year. Each union's language relating to holiday pay, time off for holidays, compensatory time, and overtime on a holiday will apply to the Juneteenth holiday as it would to any other recognized holiday for that union.		
Goal/Focus Area/Action Item Addressed:		
Amount Requested: Included in current salaries	Amount Budgeted: N/A	
Fund(s) or Account(s):	Fund(s) or Account(s):	
Recommended Motion: to approve the inclusion of Juneteenth as a recognized holiday for all city staff beginning in 2023.		
Approvals: <i>Get approval from division head at a minimum prior to sending to the Clerk.</i> Immediate Division Head ☐ Information Technology ☐ Other Division Heads ☒ Communication ☐ Legal Review ☒		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		

LETTER OF UNDERSTANDING
between the
City of Muskegon
And
Service Employees International Union, Local 517M
Service Employees International Union, Local 517M Unit 2
Fraternal Order of Police
Command Officers Association of Michigan
Muskegon Fire Fighters Union

8-15-22

The city will begin recognizing Juneteenth as holiday for all city employees beginning in 2023. The holiday will be observed on the same date as the federal Juneteenth holiday each year.

Each union's language relating to holiday pay, time off for holidays, compensatory time, and overtime on a holiday will apply to the Juneteenth holiday as it would to any other recognized holiday for that union.

LeighAnn Mikesell, Interim City Manager

FOP

SEIU, Local 517M

COAM

SEIU, Local 517M, Unit 2

MFFU

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: Sept 13, 2022		Title: Email migration to the cloud with enhanced security, backup, and user training.
Submitted By: Jason Boes, Director of Information Technology		Department: Information Technology
Brief Summary: Authorize the migration of our on-prem email systems to a cloud-hosted solution adding advanced email protection, backup, archival, and user security awareness training.		
Detailed Summary & Background: To improve the security and functionality of the user email experience, The I.T. department would like to upgrade and move our email systems to Microsoft's government cloud protected by a Barracuda Networks advanced email security solution. This migration provides benefits such as larger mailbox storage (50GB per mailbox), advanced next-gen AI threat protection, cloud-to-cloud backup and archival, and end-user security awareness training. The initial cost for the first year of cloud-hosted services and full implementation is \$64,000. The yearly cloud subscription fee for subsequent years will be \$49,000. Broken down these subscription amounts are \$4 per user per month for email and \$10.89 per user per month for protection, training, archival and backup. Amounts are budgeted.		
Goal/Focus Area/Action Item Addressed: <i>Long Term Goal 3: Community Connection – Focus Area: Communications</i>		
Amount Requested: \$64,000	Amount Budgeted: \$64,000	
Fund(s) or Account(s): 101-228	Fund(s) or Account(s): 101-228	
Recommended Motion: To approve the implementation of cloud-hosted email with added advanced protection, archival, backup, and training.		
Approvals: Immediate Division Head ☒ Information Technology ☒ Other Division Heads ☒ Communication ☐ Legal Review ☐		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		



QUOTE CONFIRMATION

JASON BOES,

Thank you for considering CDW•G for your computing needs. The details of your quote are below. [Click here](#) to convert your quote to an order.

Convert Quote to Order

QUOTE #	QUOTE DATE	QUOTE REFERENCE	CUSTOMER #	GRAND TOTAL
MVZM291	7/8/2022	BCDA EP PREM	5515496	\$35,937.00

QUOTE DETAILS				
ITEM	QTY	CDW#	UNIT PRICE	EXT. PRICE
Barracuda E-Mail Protection Premium Plus - subscription license (1 month) -	3300	6801742	\$10.89	\$35,937.00
Mfg. Part#: EP-PREPLUS-USR-1M				
Electronic distribution - NO MEDIA				
Contract: Michigan Master Computing-MiDEAL (071B6600110)				

SUBTOTAL	\$35,937.00
SHIPPING	\$0.00
SALES TAX	\$0.00
GRAND TOTAL	\$35,937.00

PURCHASER BILLING INFO	DELIVER TO
Billing Address: CITY OF MUSKEGON ACCTS PAYABLE 933 TERRACE ST MUSKEGON, MI 49440-1348 Phone: (231) 724-4126 Payment Terms: Net 30 Days-Govt State/Local	Shipping Address: CITY OF MUSKEGON JASON BOES 933 TERRACE ST MUSKEGON, MI 49440-1348 Phone: (231) 724-4126 Shipping Method: ELECTRONIC DISTRIBUTION
	Please remit payments to: CDW Government 75 Remittance Drive Suite 1515 Chicago, IL 60675-1515



Sales Contact Info

Dave Engmark | 800.808.4239 | davieng@cdwg.com

LEASE OPTIONS			
FMV TOTAL	FMV LEASE OPTION	BO TOTAL	BO LEASE OPTION
\$35,937.00	\$972.10/Month	\$35,937.00	\$1,120.16/Month

Monthly payment based on 36 month lease. Other terms and options are available. Contact your Account Manager for details. Payment quoted is subject to change.

Why finance?

- Lower Upfront Costs. Get the products you need without impacting cash flow. Preserve your working capital and existing credit line.
- Flexible Payment Terms. 100% financing with no money down, payment deferrals and payment schedules that match your company's business cycles.
- Predictable, Low Monthly Payments. Pay over time. Lease payments are fixed and can be tailored to your budget levels or revenue streams.
- Technology Refresh. Keep current technology with minimal financial impact or risk. Add-on or upgrade during the lease term and choose to return or purchase the equipment at end of lease.
- Bundle Costs. You can combine hardware, software, and services into a single transaction and pay for your software licenses over time! We know your challenges and understand the need for flexibility.

General Terms and Conditions:

This quote is not legally binding and is for discussion purposes only. The rates are estimate only and are based on a collection of industry data from numerous sources. All rates and financial quotes are subject to final review, approval, and documentation by our leasing partners. Payments above exclude all applicable taxes. Financing is subject to credit approval and review of final equipment and services configuration. Fair Market Value leases are structured with the assumption that the equipment has a residual value at the end of the lease term.

Need Help?



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Support



Call 800.800.4239

[About Us](#) | [Privacy Policy](#) | [Terms and Conditions](#)

This order is subject to CDW's Terms and Conditions of Sales and Service Projects at <http://www.cdwg.com/content/terms-conditions/product-sales.aspx>

For more information, contact a CDW account manager

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APPENDIX A

Customer Name: City of Muskegon

Street Address: 933 Terrace Street

City, State, Zip: Muskegon, MI 49440

The Agreement referenced below by and between Sentinel Technologies, Inc., (Contractor) with principal offices at 2550 Warrenville Road, Downers Grove, Illinois 60515, and City of Muskegon (Customer) with principal offices at 933 Terrace Street, Muskegon, MI 49440 is hereby appended to include the following:

Commencement Date Agreement No. 001-PE-m-JR Addendum No. 013r1-PE

Engagement Overview

Executive Summary

The City of Muskegon is looking to migrate from a on premise Microsoft Exchange infrastructure to Microsoft Office 365, Exchange online. It is the intent of this engagement is that Sentinel will architect, design, and implement the project according to Sentinel established best practices and, in a manner, ready for production computing. During this project, knowledge transfer of general administration tasks, points of scale, and the environment will be provided to prepare the customer staff moving forward after the engagement.

The next section "Project Overview" highlights the main phases involved in this project. The "Scope of Work" section then lays out in further detail what is covered as part of this project. Finally, "Customer Responsibilities and Assumptions" details important assumptions Sentinel has made in discussion with the City of Muskegon's Team. A Pricing page is also included at the end of this document.

Project Overview

Project Phases

Phase 1 - Project Initiation Meeting

Sentinel Project Management will coordinate a kick-off meeting to review and approve the Scope of Work provided to the Customer. Customer and Sentinel provided resources will be introduced and their relevant roles for the project discussed. Sentinel Project Management will then coordinate a time for a site visit by Sentinel Engineers in order to draft a blueprint of all proposed work which will be provided to the Customer. High level timelines for project milestones will also be identified and discussed.

Phase 2 - Analysis & Design

Sentinel engineers will perform a high-level audit of the Customer's relevant infrastructure. The data collected from this audit will be used to generate a design for the implementation of the solution. Sentinel engineers will inform the Customer of any design requirements that will need to be completed by the Customer's IT staff prior to the start of the next phase (such as provisioning of storage space, acquisitions of licenses, and other essential design components not covered within this document). Upon acceptance of the work as detailed within the blueprint by the Customer, Sentinel engineers and project managers will then coordinate specific dates and times appropriate for accommodating the nature of the work involved (i.e. work which will require outages will be scheduled during appropriate maintenance windows).

Phase 3 - Staging

During the staging phase, equipment will be unboxed, burned-in, configured and tested off-site before being repacked and delivered for onsite implementation. This ensures maximum efficiency and quality while minimizing the disruptions and impacts to the Customer's environment.



Phase 4 - Implementation

Sentinel engineers will proceed with the implementation of all items specified within this Scope of Work and further detailed in the Customer approved Design Document.

Phase 5 - Post Support

Sentinel engineers will be dedicated to being available for the resolution of any problems or issues that arise during the post support portion of the project.

Phase 6 - Project Completion

Upon conclusion of all other phases of work Sentinel's engineers will provide the Customer with updated design documents for the project. Sentinel's project management team will then arrange for a meeting with the Customer to review the status of all project items. If no project items remain open Sentinel's project managers will request that the Customer sign off on the project, thus closing the project at that time.

Solution Overview

Statement of Work

Planning and Pre-Engagement Preparation

- Identification of key Customer project team members with whom Sentinel will work to accomplish the tasks defined in this Scope.
- Review required hardware, software, networking, and facilities required to successfully complete this engagement.

Analysis & Design

General

- Analyze the current environment to make sure the environment is ready for infrastructure implementation based upon the assumptions laid out in the next section.
- Engage with the Customer team to brainstorm the technical requirements and use case design for the implementation.
- Develop specific requirements, design, and use case specifications blueprint document based upon Customer discussion.

Microsoft Office 365 Migration

- Discuss and document the requirements for the available configuration options for the Office 365 tenant, including but not limited to:
 - Mailbox configuration.
 - Access rights.
 - Tenant management.
 - Microsoft Office 365 Archiving.
 - Exchange Online Protection (Barracuda).
 - Exchange Online Retention policies.
- Verify access to the Domain Registrar.

Microsoft Exchange 2016 Administrative Server

Determine the requirements and configurations needed to deploy an Exchange 2016 administrative server.

Microsoft Office 365 SMTP Mail Relay

- Determine if Office 365 mail relay will be used vs SMTP role on a Linux Server.
- Create a test plan and schedule for the applications and devices using the relay.



Implementation

Microsoft Office 365 Migration

- Configure the Office 365 GCC tenant as designed.
- **Note, mail flow will be changed as a final step.

Microsoft Exchange 2016 Administrative Server

Setup the new administrative server in the City of Muskegon's environment for managing the O365 tenant.

Microsoft Office 365 Email Migration

Sentinel will migrate all 275 user mailboxes and 25 resource mailboxes from On Premise exchange to O365 tenant.

Decommission the On Premise Exchange Infrastructure

- Update Office 365 to direct email flow to Office 365.
- Validate the new email flow.

Cutover / Migration Strategy

Sentinel has provided Engineering and Project Management professional services to support a cutover/migration strategy. The project team will deploy the solution within an estimated one (1) cutover window(s). Any additional cutovers, or phased installation work will be added into scope via the change order (PCR) process and may require additional professional services to complete.

Cutover Planning Services Provided by Sentinel

Prior to any cutover, the Sentinel PM and Lead Engineer on the project will provide a "Solution Installation and Cutover Plan" which details the following:

- Start time and End time that is targeted for the maintenance window required for the cutover.
- Step by step plan for the work that is to be done prior to the installation, during the installation, and after the installation.
- Task ownership for each of the tasks identified.
- Task durations for each of the tasks identified.
- Back-out plan – along with a timeframe that identifies when we will initiate the back out plan.
- Test and Acceptance plans to be executed.

Once the cutover/installation plan has been created, the Sentinel Project Team and the Customer will meet to review and approve the plan. Prior to the cutover, a "go/no-go" call will take place to once again review the cutover plan and ensure that all stakeholders involved in the cutover are available, and all pre-cutover tasks have been completed successfully in preparation for the maintenance window. If a Customer requests to cancel and reschedule a cutover, rescheduling charges may apply. Any impact to Customer resource schedules as a result of a "no-go" call, will be Customer responsibility.

Documentation and Knowledge Transfer

- Provide documentation of the setup including a revised Sentinel design doc as well as any available vendor-created administrative and/or best practices guides.
- Provide knowledge transfer including basic functional overviews of products implemented, demonstrating the normal operations as installed in the Customer's environment.
 - Note that knowledge transfer and functional overviews are not a substitute for formal vendor product Customer Education courses available. Sentinel strongly encourages attendance at Customer Education classes to gain further insight into the product architecture and its integration.

Sentinel welcomes Customer to be involved in all aspects of the project life cycle to achieve the highest level of knowledge transfer during the project. While there is no way to guarantee the level of knowledge transfer that will occur, additional time can be added to the staging, installation, or testing portions of the project to try and accomplish this need. This request should be scheduled with the Project Manager. If additional time is added for this request, it will be handled through Sentinel's PCR process.



Customer's that seek to get the most out of the knowledge transfer have had a higher degree of success by combining the specific deployment knowledge transfer with formal Cisco course training. When the course work is done prior to the project knowledge transfer Sentinel has seen the highest degree of self-support post installation. That knowledge transfer and functional overviews are not a substitute for formal vendor product Customer Education courses available. Sentinel strongly encourages attendance at Customer Education classes to gain further insight into the product architecture and its integration.

Project Management

Sentinel will provide a project manager committed to the success of the project. The project manager will be responsible for:

- Complete success of the project.
- Optimal coordination of all resources.
- Guiding the Customer on aspects of the project they are required to perform.
- Tracking and reporting of progress.
- Management of agreed to budget issues.
- Management of expected timelines for implementation.
- Changes to the project and communications of changes in writing using a Project Change Form.
- Post installation document gathering, assembly and presentation.
- Post installation project completion agreement and signature.

Project management will ensure complete project success. Communication is the cornerstone of project management, and the project manager will be the central communication mechanism for all parties. This will assure all relevant parties are informed about decisions that may affect the success of their component of the solution.

Customer Responsibilities and Assumptions

Project Specific

- The City of Muskegon will be responsible for the installation of the new Office suite on all workstations.
- Sentinel will not be performing any work on end user workstation.
- Any issues with the current on-premise exchange found during the health check that require resolution prior to migration will be considered out of scope of this project.
- The City of Muskegon will need to provide remote access and domain administration access to their environment.
- The City of Muskegon IT team will install and configure an SMTP relay server.
- The City of Muskegon IT team will be making all changes to the Barracuda environment needed by Sentinel as part of this project.

General

The following is a list of responsibilities and/or tasks that Sentinel assumes have been completed or reviewed by the City of Muskegon to the execution of the above-mentioned project. If additional responsibilities are uncovered during the project, Sentinel will make sure that the City of Muskegon is made aware of any issues promptly to determine resolution.

Product Lead Times

Depending on the technologies quoted, orders may be direct or through distribution. Lead times should be expected to be 8 weeks but can exceed 8 weeks. Should expedited equipment requirements arise, there could be an additional charge to source through a warehousing distribution partner.

Site Readiness and Site Survey Requirement

Every effort has been made to ensure that proper power cords and patch cables have been included to match your environment's infrastructure. The notes section of the Bill of Materials (BOM) explicitly states the quantity and type of cords quoted.



Four options are available to ensure the accuracy of the selected items; please initial next to which method you agree to: (SELECT AND INITIAL ONLY ONE)

Note: In the absence of the Customer selecting one of the four options below, it is agreed that the contract will default to Option #1.

Initials

Option 1

Customer waives the opportunity to complete a site/closet checklist, has reviewed the BOM and agrees to quantity, type and length of the power and patch cables provided. [Financial obligation for labor and materials for changes identified post order will be the Customer's responsibility]

Option 2

Customer has provided a site/closet review checklist document and confirms the quantity, type and length of the power and patch cables quoted. [Financial obligation for labor and materials for changes identified post order will be the Customer's responsibility, unless Sentinel provided the incorrect part based upon the provided checklist]

Option 3

Customer elects a "for charge" onsite survey of the facilities and closets to determine the quantity, type and length of the power and patch cables required. In addition, Sentinel will assess each closet's cooling and UPS readiness for the proposed equipment being provided. [Financial obligation for labor and materials for changes identified post order will be Sentinel's full responsibility, unless changes to the site have taken place subsequent to the site assessment]

Option 4

Not applicable. This SOW does not contain any work that would be performed in or impacted by the Customer's MDF, IDF or Data Center facilities.

Permits & Access

Unless otherwise agreed, all permits, variances, access to facilities, roof access, building warranty concerns or other site specific information and procedures are the responsibility of the Customer. Sentinel can assist as needed, but will need to be informed of any requirements prior to the site survey to consider these within the validation process.

Remote Support

Sentinel's service estimate assumes remote access support through IP VPN or IP PPP connection. Without this access, additional services may be incurred for optimization and tuning required pre and post installation.

Travel Requirements and Cost

Unless specified within the proposal, all travel expenses and time are not included. Travel time shall be invoiced at pre-negotiated rates and expenses plus per diem at actual costs.

Existing Hardware Compatibility & Firmware Updates

Where Customer provides existing server or other hardware, it is assumed the Customer has verified all such hardware is compatible with the versions of the software specified within the scope. This includes relevant firmware updates. Sentinel will not be providing firmware updates to any servers as part of this Scope of Work.

3rd Party Integration

Unless noted otherwise, Sentinel assumes no reliance on 3rd Party applications, connections or plug-ins to software deployments and updates as specified in this scope. If during Analysis and Planning any required 3rd Party integration is uncovered, additional hours may be incurred.

Fiber

It is assumed that the Customer's existing fiber will support proposed transmission speeds (i.e. 1GB, 10GB, 40GB, etc.). Customer must ensure that the fiber optic cabling is within manufacturer tolerances for distance and loss in order to support the required transport speeds. In some cases, specialized equipment, such as attenuators and mode conditioning cables, may be required to properly support these speeds. This equipment will be at the expense of the Customer.



Optics (SFP, SFP+, GBIC, etc...)

Every effort was made in the pre-sales process through white board sessions, BOM reviews and diagrams to identify any and all optics required. **OPTICS AS QUOTED AND SOLD ASSUME A STAND-ALONE SYSTEM UNLESS OTHERWISE NOTED.** Migration items and integration items to existing equipment, if not noted, are not included nor is time for the interconnection, planning or design of same. Should any question exist as to the total number, types and use of the optics, Sentinel can set up a design review and white board session prior to the order upon request.

Power, Racks & Cooling

Like the optics, Sentinel has made a best effort to match any power requirements and answer any requests of the Customer related to equipment specifications, power cables included or other physical requirements. Any adjustments to fit in racks, connect to specific power terminal types, or secure electrician services to run a new service are beyond the fixed bid project price. Sentinel will respond to any inquiry and provide product literature. Any sizing charts provided are done so as a convenience to the Customer and DO NOT represent a commitment by Sentinel that, as sold, the equipment is ready for the Customer site. Sentinel offers Technology Area Design (TAD) consulting services should the Customer prefer a more formal and accurate solution.

Patch Cables / Cable Lengths

In most cases the BOM includes any note(s) on cable lengths included. Without the design validation of a formal TAD engagement, only a best effort is made to match the site requirements. Any changes to the cord lengths, connectors or other site readiness items will be in addition to the solution once the order is placed with the manufacturer(s). Many of the vendors offer the ability to select the appropriate items prior to order but will charge for any replacements needed after the order and this offer will be extended to the Customer through the Sentinel Project Change Request (PCR) process. Unless specified, Sentinel assumes the Customer will provide all patch cables needed and can provide the product literature on any devices upon request.

Labor Union Requirements

Sentinel has NOT included any parameters for Union workers. Any requirement would require a subcontract arrangement to be determined up front and would increase the cost of deployment.

Patching and Equipment Cabling

Sentinel assumes, unless noted here, that the Customer will patch in all equipment to the cabling plant within the facility. Sentinel can perform this connection service at an additional charge with an approved PCR.

Pricing Summary

O365 Exchange Online Migration

Solution Subscriptions - Unless explicitly indicated otherwise within this contract, the below term for these subscription services will automatically renew, absent at least ninety (90) days' notice of cancelation by Customer before the start of the renewal term. For subscription services that do not automatically renew, Customer must provide Sentinel with at least ninety (90) days' notice of its intention to renew the services and shall hold Sentinel harmless from any service interruption to result from the cessation of services due to Customer's failure to provide timely notice as stated herein.

		Terms & Price
Microsoft		
Initial Term		12 Months
Estimated Start Date		9/1/2022
Billing Model		Prepaid
Renewal Term		12 Months
Initial Term Subscriptions Sub-Total:	\$	13,200.00
Subscriptions Total	\$	13,200.00



Total Project - Project Total Cost is based on the combined purchase of all Hardware/Software, Professional Services and Solution Maintenance from Sentinel as detailed in the attached Bill of Materials. Unbundling or materially reducing any of these essential elements of the solution may result in modifications to the cost of the remaining elements.

		Extended Price
Solution Subscriptions	\$	13,200.00
Professional Services	\$	14,800.00
Project Total	\$	28,000.00

*Quote is valid until 09/16/2022

Plus applicable tax, shipping & handling

*Regarding the resale of any products, pricing may be subject to a manufacturer price increase before the expiration date of the quote.

Microsoft

Microsoft							
Description	Qty	Unit Price	Ext Price	Initial Term	Estimated Start Date	Billing Model	Renewal Term
Exchange Online P1-GCC-1Y	275	\$ 48.00	\$ 13,200.00	12 Months	9/1/2022	Prepaid	12 Months
Initial Term Subscriptions Sub-Total:						\$13,200.00	

General Terms and Assumptions

- With regard to any software licenses installed by Contractor as necessary to effectuate the provision of services under this Agreement, thus not within the scope of the deliverables, Customer is hereby prohibited from duplicating said software in any form or fashion and is further restricted from using the software beyond the intended scope set forth herein. Moreover, Customer is restricted from licensing, sublicensing or transferring said software to any third party (except to a related party) without the express permission of Contractor, under which circumstance the software shall stay under the control and auspices of the Contractor. In the event Customer loses or damages the software, a copy may be provided at a nominal charge. Contractor may, at its discretion, remove said software upon the completion of its provision of services. Alternatively, at the end of this engagement or the license period, whichever occurs first, Customer is required to either destroy or return all copies of said software to Contractor, as expressly directed by Contractor.
- The manufacturer/support provider has the right to inspect any products that have either never had support coverage or have not had support coverage for an extended period to determine their eligibility for maintenance/support. Devices subject to inspection will be flagged as such and are subject to a non-refundable inspection fee, which shall be the responsibility of Customer. Sentinel will work with the manufacturer/support provider on Customer's behalf until device eligibility is determined. Devices that do not pass the inspection will be ineligible for support.
- For products purchased pursuant to this agreement, Contractor agrees to provide storage at no additional charge for up to 90 days. If the storage period exceeds 90 days, Customer agrees to the following: a.) Customer will be responsible to pay a fee of 2% per month for storage of purchased products from that point forward, b.) Customer will be invoiced and will be responsible to pay the unpaid balance for any products purchased from Contractor that have not been paid in full and, c.) Ownership will transfer from Contractor to Customer.
- For all products purchased, it is assumed that prior to order execution with Contractor, Customer has reviewed, understood, and agreed to each manufacturer's respective terms and conditions governing the purchase of products, including, but not limited to, applicable warranties, order cancellation, and return policies. In the event of a return request, Sentinel may assist Customer by facilitating the request between Customer and the manufacturer. In addition, product return requests will be subject to Sentinel's own return policies, which may include restocking fees and/or shipping and handling costs.



- Under no circumstances will Customer have the right to withhold payment to Sentinel due to an alleged breach of any express or implied warranties with regard to the products purchased herein. Any such claim shall be handled directly between the manufacturer and Customer. If Contractor receives any financial relief or incentives intended for Customer as a result of a settlement between Customer and the manufacturer, Contractor agrees to pass through the incentives or financial relief to Customer.
- Sentinel makes no guarantees with respect to this product's compliance with any local, state, or federal privacy laws, including, but not limited to, the Biometric Information Privacy Act (BIPA) and the California Consumer Privacy Act (CCPA), and Customer shall maintain all responsibility and bear all liability with regard to its compliance with such in relation to its use of this product. Customer shall indemnify and hold harmless Sentinel from any third party claims to arise out of any privacy violations with regard to this product.
- Fixed Fee Services will be progress billed monthly based on percentage of completion. Generally, services for all non-business impacting tasks are quoted at a standard rate for labor from 9:00 a.m. – 5:00 p.m. If Customer requires, Contractor can perform some of these services outside of normal business hours at an overtime labor rate. Notwithstanding the above, services related to migrations, cutovers, or changes to critical core infrastructure are assumed to be performed outside of business hours and are included in the services pricing provided in this contract. For the fixed charges listed, the Contractor shall furnish all of the materials and perform all of the work shown on the drawings and/or described in the specifications entitled Appendix A, as annexed hereto as it pertains to work to be performed at designated customer locations. Any alteration or deviation from the above specifications, including but not limited to any such alteration or deviation involving additional material and/or labor costs, will be executed only upon a written order for same, signed by Customer and Contractor, and if there is any charge for such alteration or deviation, the additional charge will be added to the contract price detailed above.

Payment Terms

Hardware/Software: For orders over \$100K, 50% at contract execution, balance upon shipment from manufacturer

All Invoices: Net 30

***This quote is valid until 09 / 16 / 2022.**

***Regarding the resale of any products, pricing may be subject to a manufacturer price increase before the expiration date of the quote.**

CUSTOMER:
City of Muskegon

Signature: _____

Printed Name: _____

Title: _____

Date: _____

P.O. #: _____

CONTRACTOR:
Sentinel Technologies, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exchange Online (Plan 1)

\$4.00 user/month

(Annual subscription—auto renews)¹

Buy now

[Learn more >](#)

- ✓ 50 GB mailbox and messages up to 150 MB
- ✓ Outlook on the web provides a premium browser-based experience
- ✓ Focused Inbox makes it easy to track email that matters most
- ✓ Automatically move old messages to an In-Place Archive

Barracuda Email Protection

Complete security for Microsoft Office 365

For organizations that want to protect their businesses, brands, and people against the most advanced email-borne threats, Barracuda Email Protection is a comprehensive, easy-to-use solution that delivers gateway defense, API-based inbox defense, incident response, data protection, and compliance capabilities.

Block spam, malware, and zero-day threats

Barracuda uses advanced techniques to detect known spam and malware. It also provides email continuity, along with outbound filtering and encryption, to prevent data loss. Built-in Advanced Threat Protection uses payload analysis and sandboxing to discover zero-day malware. Link protection redirects suspicious and typo-squatted URLs, and DNS filtering blocks access to malicious web domains to prevent recipients from downloading malware inadvertently.

Get real-time defense against spear phishing

Barracuda's unique API-based architecture lets its AI engine study historical email and learn users' unique communication patterns. It can then identify anomalies in message metadata and content, to find and block socially engineered attacks in real time.

Defend your organization against account takeover.

Barracuda stops the phishing attacks that hackers use to harvest credentials for account takeover. It detects anomalous email behavior and alerts IT, then finds and removes all fraudulent emails sent from compromised accounts.

Respond to email threats post-delivery.

Identify potential threats post-delivery based on insights gathered from analysis of previously delivered email and community-sourced threat intelligence. Preserve IT resources with automatic removal of malicious messages and automated response playbooks. Stay ahead of the cybercriminals and block future attacks with continuous remediation.

Train users to identify the latest threats

Enable your users to recognize the latest phishing techniques and help prevent attacks from spreading across your organization. Get access to highly engaging training materials and phishing simulations based on real-world threats.

Secure data and ensure compliance.

Get cloud backup for Office 365 data including Exchange Online mailboxes, SharePoint Online, OneDrive for Business, and Teams. Fast point-in-time recovery in the event of accidental or malicious deletion. Cloud archiving helps you meet compliance requirements with e-discovery, granular retention policies, and unlimited storage.

Key Features

Phishing and Impersonation Protection

- Direct connectivity to Office 365
- Fast, easy setup (less than 5 minutes)
- Stops spear-phishing attacks, business email compromise (BEC), extortion, and other socially engineered attacks
- Artificial intelligence to detect and stop email attacks in real time
- Detects and alerts account takeover activity
- Notifies external users and deletes compromised email
- Blocks attackers' access to compromised account
- Provides visibility into inbox rule changes and suspicious sign-ins
- Threat environment analytics and reporting

Incident Response

- Outlook add-in and one-click threat reporting
- Security incident alerts
- Geographical insights
- Community-sourced threat data
- Recipient and behavior data
- Removes emails from user mailboxes
- Sets inbound email policies
- Blocks access to malicious web content
- Automatic remediation of malicious content
- Continuous remediation
- Automated workflow builder
- API integration for SOAR/SIEM/XDR platforms

Cloud-to-Cloud Backup

- Backup and recovery for Office 365: Exchange Online, SharePoint Online, OneDrive, and Teams for Business.
- Granular scheduling and restores
- Automated or manual backups
- Multi-selection restores
- Granular recovery of SharePoint items
- Restore back to Exchange Online or OneDrive for Business, or download files locally

Email Gateway Defense

- Cloud-based protection against spam, malware, viruses, phishing, and other email-borne threats
- Advanced Threat Protection using full-system emulation sandbox
- Agentless email encryption and data loss prevention
- Link and typo-squatting protection
- Email continuity with failover to cloud-based email service
- Emergency mailbox to send, receive, read, and respond to email

Cloud Archiving

- Archive directly from Office 365 to cloud-based archive
- PST management for legacy email
- Granular retention policies
- Full text search with multiple operators

Security Awareness Training

- Threat simulation for email, SMS, voice, and physical media
- Real-world threat templates
- Security education and Microlearning videos
- Quizzes and risk assessment surveys
- Collects over 16,000 data points
- Detailed trend analytics
- Customizable reports and dashboards

Domain Fraud Protection

- DMARC authentication, reporting, and analysis
- Prevent domain spoofing and brand hijacking

DNS Filtering

- Protects against web-based threats
- Web content filtering
- Web filtering logs
- Administrative reports
- Automatic alerts

Data Inspector

- Scans OneDrive and SharePoint for sensitive information and malicious files
- Malicious file identification
- Data classification settings
- Automated email notifications for admins, compliance officers, and users
- Role-based access control
- Advanced encryption capabilities

Barracuda Email Protection is available in three plans. Find the plan that's right for you.

CAPABILITIES	ADVANCED	PREMIUM	PREMIUM PLUS
Spam and Malware Protection	✓	✓	✓
Attachment Protection	✓	✓	✓
Link Protection	✓	✓	✓
Email Continuity	✓	✓	✓
Email Encryption	✓	✓	✓
Data Loss Prevention	✓	✓	✓
Phishing and Impersonation Protection	✓	✓	✓
Account Takeover Protection	✓	✓	✓
Automatic Remediation	✓	✓	✓
Domain Fraud Protection		✓	✓
DNS Filtering		✓	✓
Threat Hunting and Response		✓	✓
Automated Workflows		✓	✓
SIEM/SOAR/XDR Integration		✓	✓
Cloud Archiving			✓
Cloud-to-Cloud Backup			✓
Data Inspector			✓
Attack Simulation			✓
Security Awareness Training			✓





Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: September 13, 2022	Title: District Library Board Appointment
Submitted By: Ann Marie Meisch	Department: Clerk
Brief Summary: To concur with staff recommendations on reappointment to District Library Board.	
Detailed Summary: Staff recommends reappointing Clayton Hardiman to the District Library Board – Mayor/City Commission Appointment – Term expiring 6/30/2026	
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 staff recommendation to accept the reappointment to the District Library Board	
For City Clerk Use Only: Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 13, 2022		Title: Adelaide Pointe Cooperative Use Agreement	
Submitted By: LeighAnn Mikesell		Department: City Manager	
Brief Summary: Staff is seeking approval of the updated cooperative use agreement and rescission of the former development agreement for the Adelaide Pointe development.			
Detailed Summary & Background: A development agreement for the Adelaide Pointe development was approved by the commission on October 26, 2021. Staff and legal counsel are negotiating with the developer on revised terms and seek to rescind the former agreement. Staff is seeking approval of the revised cooperative use agreement as the first step in a final development agreement for the property. The cooperative use agreement addresses the various property exchanges, how property will be accessible to the public, and collaborative pursuit of funding. Staff and legal counsel have worked through numerous iterations of this agreement with the developer and have reached agreement that all can support. Staff will seek approval of a revised development agreement at a future meeting.			
Goal/Focus Area/Action Item Addressed: Focus Area: improved access to the waterfront, blight cleanup, progress toward completion of ongoing economic development projects Action Item 2022-2.6: Complete Adelaide Pointe public improvements			
Amount Requested: N/A		Amount Budgeted: N/A	
Fund(s) or Account(s):		Fund(s) or Account(s):	
Recommended Motion: to approve the updated cooperative use agreement and rescind the development agreement formerly approved on October 26, 2021 for the Adelaide Pointe development.			
Approvals:		Guest(s) Invited / Presenting	
Immediate Division Head	☐	Information Technology	☐
Other Division Heads	☒	Communication	☐
Legal Review	☒		
		Yes	☐
		No	☒
For City Clerk Use Only:			
Commission Action:			

Development Agreement

ADELAIDE POINTE

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made October 26, 2021 (“Effective Date”) between the **City of Muskegon**, a Michigan Municipal Corporation (“City”), with an address of 933 Terrace St., Muskegon, MI 49440, and **Adelaide Pointe Qozb, LLC** (“APQ”), with an address of 1204 W. Western Avenue, Muskegon, MI 49441. City and APQ are at times referred to as a “Party” or together as “Parties”.

Background

APQ owns approximately 30 acres of waterfront brownfield property which is located at the west end of West Western Avenue within the City of Muskegon and legally described and depicted on **Exhibit A** (“APQ Property”).

The City owns certain property adjacent to, and to the east of, the APQ Property which the City has previously used for public small boat slip rentals and related activities and legally described and depicted on **Exhibit B** (“City Property”). The APQ Property and the City Property may be collectively referred to as the “Property”.

APQ intends to develop the Property for mixed uses including boat storage, boat dockage, in-out boat service, marinas, residential condominiums, commercial uses, and open space and recreational areas (“Development”). The specific improvements to be included in the Development will be defined in this Agreement and the Planned Unit Development Agreement (“PUD”) to be submitted to the City (“Development Agreements”).

The Parties agree as follows:

1. **Background.** The Parties agree the Background paragraphs are true and correct and are incorporated into the body of this Agreement.
2. **APQ Obligations.** APQ will develop both the APQ Property and the City Property as a mixed-use development including boat storage, boat dockage, in-out boat service, marinas, residential condominiums, commercial uses, and open space and recreational areas in accordance with the plans and specifications attached to this Agreement as **Exhibit C** and in the PUD (“APQ Improvements”). To the extent the plans and specifications in the PUD differ from the plans and specifications attached to this Agreement, this Agreement shall control.
3. **Schedule for APQ Obligations.** The schedule for construction of the APQ Improvements is set forth on **Exhibit D**. (Schedule of milestones, improvements and costs)

A summary of the schedule follows:

- a. 2021 Repair existing buildings and improve site (“Milestone A”);
- b. 2022 Clear and improve municipal peninsula (east of small boat basin) and both APQ peninsulas. Expand size of small boat basin as depicted on Exhibit C and install an in/out dock. Improve small boat basin, including removal of the existing rest room facilities and construct new rest room facilities, implement dry rack boat storage; (“Milestone B”);
- c. 2023 Construct the new marina, including public transient dock (“Milestone C”);

- d. 2023 Construct the multi-use building (“Milestone D”);
- e. 2025 Construct Condominium Building #1 with 50 residential living units (“Milestone E”);
- f. 2026 Construct Condominium Building #2 with 50 residential living units (“Milestone F”);
- g. 2027 Construct Condominium Building #3 with 50 residential living units (“Milestone G”);
- h. 2028 Construct Condominium Building #4 with 50 residential living units (“Milestone H”);
- i. 2029 Construct Condominium Building #5 with 50 residential living units (“Milestone I”); and,
- j. 2030 Construct Condominium Building #6 with 50 residential living units (“Milestone J”).

To the extent that the construction of any building requires the relocation of the bike trail, APQ shall cover the cost of the trail relocation and installing additional landscaping. City and APQ shall cooperate in working with the State of Michigan in the conversion of the bike trail from its current location to the new location, if moved. City has no objection to the public crossing the bike path, provided APQ provides a safe crossing area.

4. **Peninsulas.** APQ shall provide the City a public access easement to the APQ peninsulas as long as the City provides to APQ exclusive full access and management of the lift well, boat ramp and in/out dock, subject to approval of the State of Michigan. APQ shall have naming rights for the APQ peninsulas that are part of the Project. APQ shall have the right to manage the APQ peninsulas and schedule events to take place there and charge normal use fees for that service consistent with other venues, subject a reservation policy mutually agreeable the City and APQ. The City shall allow APQ to construct improvements on the peninsulas owned by the City and fill submerged land as necessary to complete improvements. The cost of improvement made by APQ on the APQ peninsula and the City peninsula shall not be less than \$1,200,000.
5. **City Obligations.** The City will design and construct street improvements, watermain improvements, and sanitary sewer improvements, lift well in small boat basin, heavy-duty triple axle trailer ramp, sidewalks, landscaping, and improvements on surrounding areas, some of which are owned by the City or APQ for the benefit APQ and the City. The public improvements shall be constructed in accordance with the plans and specifications attached as **Exhibit E** (“Public Improvements”). In addition, the City agrees to coordinate the design and installation of the other utilities, including gas, telephone, cable and internet (“Other Utilities”). The Other Utilities shall be built within proposed public right-of-way or public utility easements. APQ agrees to grant such easements as are necessary to construct the Other Utilities. The City will be responsible for the construction, and installation of the Public Improvements together with construction engineering costs, in connection therewith. The City will coordinate the installation of the Other Utilities.
6. **Schedule for City Obligations.**
 - a. *Phased Development.* APQ and City acknowledge the Public Improvements cannot be constructed simultaneously. The City may need to decide that certain of the planned Public Improvements may need to be delayed or not made. The construction of the planned Public Improvements shall be constructed in accordance with the schedule attached to this Agreement as **Exhibit F** (Schedule of milestones, improvements and costs) and phased as follows:
 - i. The initial phase shall be the City's construction of, either by City personnel or contractors, watermain improvements, storm sewer improvements and sanitary sewer improvements at the west end of Western Avenue and on the Property.

- ii. The second phase of development shall be construction of roads, curbs and sidewalks, landscaping, lift well and heavy-duty triple axle trailer ramp located in the small boat basin.
- b. *Reservation of City.* City shall have no obligation to construct any of the Public Improvements until the City, in its sole discretion, is satisfied that funds are available to pay the City, or its contractors, for any of the work to be performed. In the event City has not made the determination that it is satisfied that such funds are available by December 31, 2023, this Agreement automatically terminates.

Funding for Public Improvements.

- c. *Public Grants and Loans.* APQ has applied for, or is anticipating applying for, state and federal grants and loans. The City agrees to cooperate with, and as required by the relevant programs, to apply for such grants, loans or incentives as reasonably requested by APQ. More specifically, APQ is anticipating the following grants and government loans:
 - i. Boating Infrastructure Grant.
 - ii. U.S. Department of Fish and Wildlife BIG Grant.
 - iii. EGLE Loan.
 - iv. EGLE Grant.
 - v. State of Michigan MEDC Grant.
 - vi. State of Michigan Brownfield.

All proceeds from public grants or loans received by APQ for which the City was the applicant or proceeds are specifically allocated for the cost of construction of Public Improvements, shall be paid to City upon receipt until such time as the cost of Public Improvements is paid in full.

- d. *Brownfield Tax Increment Financing.* APQ has submitted to the City of Muskegon Brownfield Redevelopment Authority, a Michigan public body corporate authority (the “Authority”), whose address is 933 Terrace Street, Muskegon, Michigan 49440 an amendment to the current brownfield plan. Pursuant to the Brownfield Redevelopment Financing Act, Act 381 of the Public Acts of Michigan of 1996 as amended (“Act 381”) the Authority adopted the brownfield plan amendment on October 12, 2021 (the “Brownfield Plan Amendment”) to add the APQ Property.
 - i. 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”).
 - ii. Neither the City nor APQ is a liable party, under Part 201, for remediation of any existing contamination on the Property.
 - iii. APQ has and will continue to conduct Eligible Activities (as defined in Act 381) on the Property to address environmental and other brownfield conditions, in a collaborative effort to position the Property for redevelopment. Actual expenditures by the Parties to undertake eligible environmental activities on the Property are estimated to be \$35 million dollars not including

interest. Eligible demolition and site preparation costs incurred by these same parties is estimated to exceed \$13 million dollars. These efforts are aimed at facilitating the redevelopment of the Property as a transformational mixed-use project, including residential and various commercial uses (the “Project”).

- iv. The Project will include demolition activities, performance of baseline environmental assessment activities, due care and other environmental response activities, site preparation activities, demolition 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.
- v. The cost of Eligible Activities may be incurred by the City and APQ, The total cost of the Eligible Activities in the Brownfield Plan Amendment, including contingencies, is estimated to be \$35 million dollars (the “Total Eligible Brownfield TIF Costs”). 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 \$28million dollars (collectively, the interest plus the costs of Eligible Activities are referred to as the “Total Eligible Brownfield TIF Costs”).
- vi. 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.
- vii. 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”).
- viii. 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 and APQ for completion of Eligible Activities on the Property in amounts not to exceed the Total Eligible Brownfield TIF Costs.
- ix. During the Term (defined below) of this Agreement, and except as set forth in Paragraph 3 below, the Authority shall reimburse the City and APQ 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 the City and APQ for the Eligible Activities shall not exceed the lesser of (a) the cost of Eligible Activities incurred by the Property Owner 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 and APQ for the cost

of Eligible Activities incurred by the Parties until the earlier of the Parties being fully reimbursed or December 31, 2056 ("Term"). If the Term ends before the full reimbursement of all 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.

- x. Reimbursement payments shall be made on a semi-annual basis as incremental local and school taxes are captured and available.
- xi. During the term of this Agreement, the Authority shall capture all approved and authorized Brownfield TIF Revenue from the Property and use those revenues as provided in this Agreement.
- xii. Reimbursement Process.

1. The City and APQ shall periodically each jointly submit to the Authority a "Request for Cost Reimbursement" of Eligible Activities paid for by the City and APQ during the term of this Agreement. All costs for the Eligible Activities must be consistent with the approved Brownfield Plan Amendment. The City and APQ 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.
2. Within forty-five (45) days after receiving a Request for Cost Reimbursement, the Authority shall pay to the City and APQ the amounts for which submissions have been made pursuant to this Agreement from which the submission may be wholly or partially paid from available Brownfield TIF Revenue from the Property.

Until the City is fully reimbursed for all of the cost of Eligible Activities incurred by the City as listed in the approved Brownfield Plan Amendment, including the cost of the lift well and improvements on and under Western Avenue, all Brownfield TIF Revenue captured for Eligible Activities shall be paid to the City and no one else. Once the City is fully reimbursed for the costs it incurred for Eligible Activities on the Property as listed in the approved Brownfield Amendment, 100% of all Brownfield TIF Revenue captured shall be paid to any other party which has incurred Eligible Expenses, including APQ, until all Eligible Expenses have been fully reimbursed or until the end of the Term, whichever first occurs.

3. All requests for Cost reimbursement submitted by APQ in connection with this Agreement and the Brownfield Reimbursement Agreement between City, APQ, and the City of Muskegon Brownfield Redevelopment Authority, see attached Exhibit M, and all requests for cost reimbursement submitted by future owners of all or a portion of the APQ Property pursuant to a separate Development and Reimbursement Agreement(s), shall be reimbursed in the order in

which they are received by the City of Muskegon Brownfield Redevelopment Authority from the portion of the Brownfield TIF revenue, excluding the portion to be paid to City, as described above.

4. The Parties 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.
5. 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. 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 on School Taxes captured shall only be payable to the extent permitted by the Michigan Strategic Fund ("MSF") and/or the Michigan Department of Environmental Quality ("MDEQ").
6. The Authority shall have no obligation to reimburse the City or any other entity for Eligible Costs or interest from Brownfield TIF Revenue captured after 35 years after the date of the adoption of the Development and Reimbursement Agreement.

xiii. Allocation of Base Value and Priority of Reimbursements.

1. The initial taxable value of the Property as of the date of this Agreement is \$903,810, as set forth in the Brownfield Plan Amendment ("Base Value"). If the Property is divided into two or more 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 feet 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, regardless of when any Development and Reimbursement Agreement is entered into in connection with the redevelopment of 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 Authority's Administrative Fee and payment of all requests for cost reimbursement submitted by owners of all or any portion of the Property.

2. 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.

xiv. Adjustments.

1. Until the cost of eligible activities is fully reimbursed to the City, APQ agrees to waive any appeal of any tax assessment or reassessment of any portion of the Property; *provided, however*, that this waiver shall not be binding on any person or entity who acquires title to all or any portion of the Property after the date of this Agreement.
2. 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 the City, APQ 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 and APQ. If all amounts due the City and APQ under this Agreement have been fully paid or the Authority is no longer obligated to make any further payments to the City or APQ, the Authority shall invoice the City and APQ for the amount of such reimbursement and the City and APQ shall pay the Authority such invoiced amount within 45 days of receipt of the invoice. Amounts invoiced and paid to the Authority by the City or APQ pursuant to this Section shall be reinstated as Eligible Activities for which the City and APQ shall have the opportunity to be reimbursed in accordance with the terms, conditions and limitations of this Agreement.

xv. 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 Property Owner's rights and the Authority's obligations under this Agreement shall be modified accordingly as required by law, or by agreement of the parties.

e. *Special Assessment.*

- i. Design and Construction of Interior Roads and Utilities. The City agrees to design and construct Public Improvements and coordinate the installation of the Other Utilities.
- ii. Excess Cost and Special Assessment. APQ agrees that the Property shall be subject to a special assessment ("Special Assessment") in the amount of \$1,000,000 to the extent any amount of the cost of design, permitting, construction and installation of the Public Improvements and Other Utilities is

unpaid after July 1, 2026. APQ consents to the Special Assessment and agrees to execute the Consent to Special Assessment attached as **Exhibit G**. City agrees to discharge the Special Assessment upon completion by APQ of all of the following improvements:

1. 275 Slip Marina and all associated infrastructure;
 2. Multi-purpose building as depicted on the approved site plan; and,
 3. First of the 50 Unit Condominium Buildings depicted on the site plan
7. **Cooperation During Development.** The Parties shall cooperate during the Project in accordance with the Cooperative Development and Use Agreement attached as **Exhibit I**.
8. **Easement for Public Access.** Within 5 days of the date when the lift well is constructed, APQ shall grant to the City the easement in accordance with the Easement attached as **Exhibit J**.
9. **Ground Lease.** Contemporaneously with the execution of this Agreement, the Parties shall execute the ground lease in accordance with the Ground Lease attached as **Exhibit K**.
10. **Management.** City agrees that APQ will be the on-site manager for the Travel lift/forklift, lift well and in/out dock and will maintain all Property at its sole expense for a period of 30 years unless sooner terminated by APQ. APQ may charge use fees in an amount comparable to fees charged by other marina for similar services.
11. **State and Federal Liens.** APQ acknowledges that the City Property is subject to the state and federal liens as set forth on **Exhibit L** ("Government Liens"). APQ understands that the Government Liens have restrictions and limitations on development and that some liens may be perpetual. APQ has reviewed each Government Lien and is entering into this Agreement with full knowledge of each Government Lien, the restrictions and limitations imposed on development of the City Property and the duration of each Government Lien.
12. **Limitations of Development on City Property subject to Government Liens.** It is the understanding of the Parties after meeting with DNR:
 - a. The DNR will permit the restroom facility to be moved so long as a replacement restroom is built on the City Property.
 - b. The bike trail can be moved to the extent the new location is of comparable size and quality.
 - c. The small boat basin may be re-purposed so long as APQ provides the same or better public access to Muskegon Lake.
13. **Third Party Consents.** The Parties recognize that the development of the Project will require the consent of approval of third parties including:
 - a. Michigan Department of Environment, Great Lakes & Energy;
 - b. Michigan Department of Natural Resources;
 - c. Holder of the conservation easement on the APQ Property; and,
 - d. Muskegon County Drain Commissioner.

In the event a consent or approval cannot be timely obtained, the Parties shall work together to find a mutually agreeable solution.

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

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

To: APQ
1204 W. Western Ave.
Muskegon, MI 49440
Attn: Ryan Leestma

w/copy to:

w/copy to:

Parmenter O'Toole
601 Terrace Street
Muskegon, Michigan 49440
Attn: City Attorney

Jaffe, Raitt Heuer & Weiss, P.C.
27777 Franklin Rd. Suite 2500
Southfield, Michigan 48034
Attn: Kenneth J. Clarkson

15. **Recording.** This Agreement shall not be recorded; however, upon the request of either party hereto, the other party shall join in the execution of a memorandum or "short form" of this Agreement for the purposes of recordation.
16. **Force Majeure.** Notwithstanding anything herein to the contrary, if due to a Force Majeure Event (defined below), APQ and/or City is prevented from timely performing under this Agreement or any third-party providing services or required information in connection with this Agreement (e.g.: lender, appraiser, title company, surveyor, environmental consultants, governmental jurisdictions, etc.) closes its offices, suspends operations or otherwise prevents APQ and/or the City from timely performing under the Agreement as originally contemplated, then the applicable outstanding dates, deadlines or time periods herein, shall each be extended for the duration of the Force Majeure Event and shall resume on such date that APQ and the City, as applicable, are once again able to perform their obligations under this Agreement. To invoke the tolling of time periods as set forth herein for a Force Majeure Event, the applicable party must send written notice to the other party specifying the reason for invocation and the date on which the tolling of time begins and a subsequent notice shall be delivered to confirm the date the Force Majeure Event ended. The term "Force Majeure Event" as used herein shall mean the following: Act of God; strike, lockout, or other labor or industrial disturbance; war; blockade; public riot; fire; storm; flood; explosion; or other delay caused by unforeseeable circumstances beyond the reasonable control of APQ or the City as applicable, including widespread sickness (including sickness causing quarantine and other "stay at home" or "shelter in place" orders, and including, but not limited to, the Coronavirus Disease 2019.

17. **Severability.** If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
18. **Miscellaneous.** This Agreement may be amended or modified only by the written agreement of APQ and City. Each exhibit attached to this Agreement is incorporated and made a part of this Agreement as though more fully set forth in this Agreement. If the deadline for performing any act would otherwise fall on a weekend day or a holiday, such deadline shall automatically be extended to the next succeeding business day. This Agreement shall be interpreted under and governed by the laws of the State of Michigan. All representations and warranties made in this Agreement by APQ and City shall survive the termination of this Agreement for a period of one year.
19. **Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. Electronically imaged signatures may be used in place of original signatures on this Agreement. APQ and City intend to be bound by the signatures on the electronically imaged document, are aware that the other party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.
20. **Binding Effect.** This Agreement shall be binding upon and enforceable by the parties and their respective legal representatives, successors, and assigns.
21. **Assignment or Delegation.** Neither party shall assign or delegate all or any portion of its rights or obligations contained in this Agreement without the express or prior written approval of the other party, in which approval may be withheld in the other party's sole discretion.
22. **Estoppel.** If requested by APQ, City will provide an estoppel certificate to such party as requested by APQ which certificate shall provide, if true, that the Development Agreement and the exhibits represent the entire agreement between APQ and City and that no defaults exist under the Development Agreement and no events have occurred that would, with notice or the expiration of a period of time, constitute a default.

[Signatures appear on following two pages.]

[City Signature Page 1 to Development Agreement]

The foregoing Development Agreement is accepted and agreed to.

CITY:

CITY OF MUSKEGON,
a municipal corporation

BY _____

Name: Stephen J. Gawron

Title: Mayor

Date: _____, 2021

BY: _____

Name: Ann Meisch

Title: Clerk

Date: _____, 2021

[APQ Signature Page 2 to Development Agreement]

The foregoing Development Agreement is accepted and agreed to.

APQ:

ADELAIDE POINTE QOZB, LLC,
A Michigan limited liability company

By _____
Name: _____
Title: _____
Date: _____, 2021

Exhibit A

APQ Property Legal Description and Survey
(Available upon Request by City)

Exhibit B

City Property Legal Description and Survey
(Available upon Request by APQ)

Exhibit C

APQ Plans and Specifications

Exhibit D

Intentionally Omitted

Exhibit E

City Plans and Specifications

To be attached at a later date.

Exhibit F

Intentionally Omitted

Exhibit G

APQ Consent to Special Assessment

To be attached at a later date

Exhibit H

Intentionally Omitted

Exhibit I

Cooperative Development and Use Agreement

Exhibit J

Easement for Public Access

Exhibit K

Ground Lease

Exhibit L

Government Liens

To be attached at a later date

Exhibit M

Brownfield Reimbursement Agreement

Exhibit N

Intentionally Omitted

COOPERATIVE DEVELOPMENT AND USE AGREEMENT

ADELAIDE POINTE

THIS COOPERATIVE DEVELOPMENT AND USE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2022 ("Effective Date"), by and between the **CITY OF MUSKEGON**, a Michigan Municipal Corporation ("City"), with an address of 933 Terrace St., Muskegon, MI 49440, and **ADELAIDE POINTE QOZB, LLC** ("APQ"), with an address of 1204 W. Western Avenue, Muskegon, MI 49441. City and APQ are at times referred to as "Party(ies)."

RECITALS

APQ owns approximately 30 acres of waterfront brownfield property which is located at the west end of West Western Avenue within the City of Muskegon ("APQ Property").

The City owns certain property adjacent to, and to the east of, the APQ Property which the City has previously used for public small boat slip rentals ("City Property"). The APQ Property and the City Property are hereinafter collectively referred to as the "Property".

APQ intends to develop the APQ Property and the City Property together for mixed uses including boat storage, boat dockage, marinas, residential condominiums, commercial uses, and open space and recreational areas ("Development"). The specific improvements to be included in the Development are defined in the Planned Unit Development ("PUD"). The Muskegon City Commission approved the PUD on September 28, 2021 and, upon approval of this Agreement by the City Commission, this Agreement satisfies the third condition of the City Commission's PUD approval.

As part of the Development, APQ intends to develop the City Property for boat dockage, boat launching, and recreational purposes including fishing, picnicking and other park-type activities.

Additionally, as part of the Development, APQ intends to develop areas within the APQ Property for recreational purposes including fishing and other park-type activities.

APQ wishes to grant an easement to the City to provide public access to Muskegon Lake ("Easement Property").

APQ and the City agree that it is in the public's best interests to work together to pursue funding from various third-party sources, including but not limited to State of Michigan or Federal appropriations, grants, loans, charitable contributions etc.

The APQ Property, the City Property, and the Easement Property are generally identified on the attached **Exhibit A**.

The Parties mutually agree that it is in their best interests to allow (i) APQ to develop and operate the City Property, (ii) the members of the public to use the City Property and those portions of the APQ Property highlighted in **Exhibit A** and (iii) grant an easement to the City for public access to Muskegon Lake and (iv) collaboratively pursue funding sources to make improvements to City and APQ Property.

NOW, THEREFORE, in consideration of the promises and the respective and mutual agreements contained herein, said parties hereby agree as follows:

1. Recitals. The Parties agree the Recitals above are true and correct and are incorporated into the body of this Agreement as if set forth in full herein.

2. **City Property Access.** The City agrees that APQ may enter upon the City Property and conduct whatever activities are necessary to improve the City Property in accordance with the PUD approval. APQ or the City may construct boat launching and docking facilities in the small boat basin. APQ will have ~~exclusive~~ use and operation of boat launching and docking facilities ~~newly constructed~~ on the City Property ~~and the non-exclusive use and operation of the remainder of the small boat basin and other City Property adjacent to the small boat basin~~ during the term of this Agreement (“City Property Improvements”). Furthermore, the City agrees that APQ may operate the City Property as required for APQ’s boat launching and storage businesses or for uses that are specified in the PUD approval. Upon completion of the improvements, APQ must provide the public at large with rights of ingress, egress, parking, passage and use (for the intended purposes) to the City Property. APQ shall complete the City Property Improvements contemporaneously with the completion of the APQ Property Improvements (defined in Section 3). APQ may restrict access to the boat launching facilities, and the dock facilities to individuals who have contracted with APQ for their use. The public at large may use the recreational improvements, including park-like amenities, the shopper dock, subject to reasonable rules and regulations adopted by APQ to protect the public and the improvements. APQ may close and restrict access to the City Property as necessary to repair damage or destruction from whatever cause, to construct improvements and as may be necessary to protect the public from injury, harm and damage. APQ shall design, construct and operate all improvements all at the sole expense of APQ consistent with all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the City Property and the operation of the City Property.

3. **APQ Property Access.** APQ or the City may construct at its sole expense park type improvements on the two peninsulas on the APQ Property as APQ determines to be reasonable in its sole discretion (APQ Property Improvements”). APQ shall complete the APQ Property Improvements contemporaneously with the completion of the City Property Improvements. So long as the APQ Property is safe for use, APQ must provide the public at large with access of use (for the intended purposes) to easement property as depicted in Exhibit A which is improved for general recreational purposes including fishing, picnicking and other park-type activities. APQ may restrict access to other areas of the APQ Property which are designated in the PUD approval for private and commercial use, such as condominiums, restaurants, commercial facilities, restaurants docks and marinas. APQ may close and restrict access to the easement area on the APQ Property as necessary to repair damage or destruction from whatever cause, to construct improvements and as may be necessary to protect the public from injury, harm and damage. APQ shall design, construct and operate all improvements consistent with all laws, statutes, ordinances, orders, rules, regulations, permits, licenses, authorizations, directives and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the APQ Property and the operation of the APQ Property. APQ retains naming rights for each park.

4. **Easement.** Contemporaneously with the entry into this Agreement, the City and APQ shall enter into the easement agreement on the terms set forth in the Easement attached as **Exhibit B** to provide public access to Muskegon Lake and a park-type area for recreational activities, including fishing and quiet use and enjoyment.

5. **Mutual Pursuit of Funds.** Synchronous to these activities and efforts the City and APQ agree to actively assist one another in the capture and use of funds arising from state and federal appropriations, grants, loans, 3rd party agreements, or charitable contributions so as to assist with the implementation and development of the PUD in all regards including but not limited to facilities, amenities, infrastructure, development, construction etc.

6. **Ingress, Egress and Crossings.** City and APQ agree that the benefit and uses described in this Agreement necessitates reasonable use and crossing of both public and private property. Neither party shall interfere with the transitory access and use of the public or private property required to access the property for the uses and benefits provided by this Agreement.

7. **Term.** The term of this Agreement shall be fifteen (15) years from the date this Agreement is finally approved, and fully executed, by City and APQ. The City and APQ shall have the option to terminate this Agreement at any time following the expiration date of the term by providing thirty (30) days prior written notice to the other party. Such termination shall automatically terminate all rights of APQ to use the City Property or the City Property Improvements and shall automatically terminate all rights of City to use the APQ Property or the APQ Property Improvements. Each party shall execute any documents reasonably requested by the other party to effectuate such termination of this Agreement and termination of rights of use. Until terminated by either Party, the term shall be extended on a year-by-year basis.

8. **City Liens.** APQ shall keep the City Property free from liens arising out of any work performed, materials furnished, or obligations incurred by or for APQ, and agrees to bond against or discharge any lien within 30 days after request by the City. APQ shall reimburse the City for all reasonable out-of-pocket expenses incurred by the City as a result of any such liens and/or the removal of same within 30 days after receipt by APQ of a paid invoice therefor. This shall not prevent APQ from granting security interests against its personal property located on the City Property.

The City shall keep the City Property and the APQ Property free from liens arising out of any work performed, materials furnished, or obligations incurred by or for the City aside from those liens and encumbrances currently existing and agrees to bond against or discharge any lien within 30 days after request by APQ. The City shall reimburse APQ for all reasonable out-of-pocket expenses incurred by APQ as a result of any such liens and/or the removal of same within 30 days after receipt by the City of a paid invoice therefor.

9. **Hazardous Materials.** APQ shall not cause or permit the use, generation, storage, treatment or disposal in, on or about the City Property of any pollutant, contaminant, waste, hazardous, toxic or radioactive substance or material or mold (collectively, "Hazardous Materials") in violation of any Federal, state or local laws from time to time in effect. City shall not cause or permit the use, generation, storage, treatment or disposal in, on or about the APQ Property of any Hazardous Materials in violation of any Federal, state or local laws from time to time in effect.

10. **Operation of the Property.** APQ shall apply for and use its good faith efforts to obtain and maintain, all licenses and permits required in connection with the operation and management of the Property. The City agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with APQ in the application for, and obtaining and maintaining, such licenses and permits. APQ will comply with the approved PUD and all applicable statutes, ordinances, licenses and permits. APQ may operate a boat launching concession on City Property. Any additional concessions on City Property must be pre-approved by the City in accordance with standard City policies and procedures, including sharing of fees and expenses.

11. City Representations, Warranties and Covenants. The City represents to APQ that:

- (a) City is a duly organized, validly existing public body corporate in good standing in the State of Michigan and has all necessary power and authority to enter into this Agreement and to perform all of its obligations under this Agreement, subject to state and federal grants or appropriations.
- (b) The execution and delivery by City of this Agreement and the other documents and instruments required under this Agreement, and the performance by City of all of its obligations under this Agreement and such other documents and instruments have been duly authorized by all necessary municipal action and do not and will not result in a breach or violation of or default under any commitment, order, judgment, or decree by which the Property or City is bound.
- (c) No work has taken place on the City Property in the last one hundred twenty (120) days which would create in any party a right to a lien against any of the Property, except for such work that has been fully paid for by City.
- (d) To the actual knowledge of the City Manager or Interim City Manager, with no obligation to inquire or investigate, (i) City has not released any pollutants, contaminants, toxic wastes, hazardous substances, or other environmental hazards at, on, or under the City Property in violation of applicable statutes, (ii) City has it received any written notice that, City or any other person has released any pollutants, contaminants, toxic wastes, hazardous substances, or other environmental hazards at, on, or under the City Property in violation of applicable statutes and (iii) there have been no investigations, reports, or violations involving the City Property by any governmental authority pertaining to toxic or hazardous materials. City has not received any notice, order, claim, demand, or citation from any environmental or health agency or department having jurisdiction with respect to the City Property pertaining to toxic or hazardous materials.
- (e) Intentionally Omitted.
- (f) Intentionally Omitted.
- (g) No brokerage or leasing commissions or other compensation are or will be due or payable by City to any person, firm, corporation or other entity with respect to or on account of this Agreement.
- (h) To City's knowledge, there are no lawsuits, administrative proceedings, or other actions pending, and, City has not received written notice of any such matters threatened against the City Property, before any court or arbitrator or any governmental authority or agency which could have an adverse impact on the use of the City Property, the transaction contemplated hereunder, or the financial condition of City.
- (i) No commitments have been made to any governmental authority, utility company, school board, church or other religious body, or to any other organization, group or individual relating to the City Property which would impose an obligation upon APQ or its successors or assigns to make any contributions or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the Property.
- (j) City has no actual knowledge of, nor has it received written notice of any condemnation orders or judgment issued or obtained by the City or Muskegon County, or any other governmental or quasi-governmental authority or agency.

12. APQ Representations, Warranties and Covenants. APQ represents to the City that:

- (a) APQ is a duly organized, validly existing limited liability company in good standing in the State of Michigan and has all necessary power and authority to enter into this Agreement and to perform all of its other obligations under this Agreement.
- (b) The execution and delivery by of this Agreement and the other documents and instruments required under this Agreement, and the performance by APQ of all of its obligations under this Agreement and such other documents and instruments have been duly authorized by all necessary company action and do not and will not (i) result in a breach or violation of or default under any of APQ's operating agreement or under any commitment, order, judgment, or decree by which the Property or APQ is bound, (ii) violate any statute, regulation, order, or other law to which any Property or APQ is subject, or (iii) require APQ to obtain any consent, approval, and/or permit from any person, entity, or governmental authority, or to comply with or perform any special requirements, procedures, approvals, or actions (other than approval of the PUD).
- (c) APQ has not released any pollutants, contaminants, toxic wastes, hazardous substances, or other environmental hazards at, on, or under the Property in violation of applicable statutes. APQ has no knowledge of, nor has it received any written notice that APQ or any other person has released any pollutants, contaminants, toxic wastes, hazardous substances, or other environmental hazards at, on, or under the Property in violation of applicable statutes. To APQ's knowledge, there have been no investigations, reports, or violations involving the Property by any governmental authority pertaining to toxic or hazardous materials. APQ has not received any notice, order, claim, demand, or citation from any environmental or health agency or department having jurisdiction with respect to the Property or APQ pertaining to toxic or hazardous materials.
- (d) There are no leases, agreements, agreements of sale, options, licenses, management contracts, employment agreements, equipment agreements, supply agreements, water agreements, sewer agreements, utility or concession agreements or agreements with municipalities (including improvements or development escrow or bonds), license agreements, service agreements, contracts, or arrangements, oral or written, relating to, affecting or binding on the Easement Property or any part thereof which would interfere with the City's intended use of the Easement Property.
- (e) APQ is not a party to any, nor has it granted any lease, license or other right of occupancy to any third-party, there are no tenants, licensees, or other occupants of the Easement or any part thereof under any such agreements, nor does any party, other than APQ pursuant to this Agreement, have any right or option to use the Easement or any portion thereof.
- (f) No brokerage or leasing commissions or other compensation are or will be due or payable by APQ to any person, firm, corporation or other entity with respect to or on account of this Agreement.
- (g) To APQ's knowledge, there are no lawsuits, administrative proceedings, or other actions pending, and, APQ has not received written notice of any such matters threatened against the Property, before any court or arbitrator or any governmental authority or agency which could have an adverse impact on the use of the Property, the transaction contemplated hereunder, or the financial condition of APQ.

(h) APQ has no actual knowledge of nor has it received written notice of any condemnation orders or judgment issued or obtained by the APQ or Muskegon County, or any other governmental or quasi-governmental authority or agency.

13. Insurance.

(a) Each Party agrees to procure and maintain, at such Party's own expense, a minimum of the following insurance:

(i) Comprehensive public general liability insurance, including without limitation bodily injury, personal injury, property damage, products liability, contractual liability covering the provisions of this Agreement, and liquor liability, in an amount not less than three million dollars (\$3,000,000.00) single limit per occurrence. The policy shall include or be endorsed to include each Party as named additional insureds.

(ii) Automobile liability insurance in an amount not less than one million dollars (\$1,000,000.00) single limit per occurrence. The policy shall include or be endorsed to include each Party as named additional insureds.

(iii) As to APQ, worker's compensation insurance covering all of APQ's employees and employer's liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) or as required by law covering all APQ's employees.

(iv) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the other Party.

(b) All insurance coverage provided for under Section 13 by APQ shall be secured through policies issued by insurance companies of good reputation and of sound and adequate financial responsibility having a general policy holder's rating of not less than "A" ~~and a financial rating of not less than Class "X"~~ in the most current edition of Best's Insurance Reports. All insurance coverage provided for under Section 13 by the City shall be provided through the Risk Authority for municipalities. The party procuring such insurance shall deliver to the other party proof of insurance with respect to all of the policies of insurance so procured, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to renewal policies not less than ten (10) days prior to the respective dates of expiration. City shall be entitled to review complete copies of any policies of insurance APQ is required to maintain under this Agreement, subject to redaction by APQ of information that APQ reasonably considers to be proprietary and/or confidential, within twenty days of City's request.

(c) Intentionally omitted.

(d) Neither APQ nor City shall assert against the other, and APQ and City hereby waive with respect to each other, any claims and rights of recovery for any losses, damages, liability or expenses (including attorneys' fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, operation and maintenance of the Property, to the extent that the same are covered by the insurance required under this Article 11.

14. Estoppel. Not later than thirty (30) days after the request of either Party, the other Party will execute an estoppel certificate in a form requested: (a) confirming the terms of this Agreement, (b) acknowledging that this Agreement has not been modified (or, if so, identifying all modifications) and is in

full force and effect, and (c) confirming that neither Party has any claims or defenses under this Agreement or, if any are claimed, a statement in reasonable detail describing the basis for such claims.

15. Subordination. This Agreement is and shall be subject and subordinate, at all times, to the lien of any security interest in personal property owned by APQ and any mortgage or mortgages which may now or hereafter affect the APQ Property, and to all advances made or hereafter to be made upon the security thereof and to the interest thereon, and to any agreements at any time made modifying, supplementing, extending or replacing any such mortgages. City Property is expressly excluded from any subordination.

16. Termination Rights.

(a) Termination by City. City shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(i) APQ fails to keep, observe or perform any material covenant, agreement, term or provision of this Agreement or the Easement to be kept, observed or performed by APQ under this Agreement or any document referred to in this Agreement, and such default continues for a period of thirty (30) days after written notice of such default by City to APQ; or

(ii) (A) The appointment (voluntary or involuntary) of a receiver, trustee or liquidator of APQ or of all or a substantial part of its assets; (B) APQ files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; (C) APQ files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against APQ; (D) APQ admits in writing its inability to pay its debts as they come due; (E) APQ makes a general assignment for the benefit of creditors; or (F) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating APQ a bankrupt or insolvent or approving a petition seeking reorganization of APQ or appointing a receiver, trustee or liquidator of APQ or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days.

(iii) City's right to terminate this Agreement pursuant to this Section 16 shall be exercised upon written notice to APQ given at any time after the applicable grace period has expired. City's termination notice shall specify the effective date of such termination, which date shall not be less than thirty (30) or more than sixty (60) days after the date of City's termination notice.

(b) Termination by APQ. APQ shall have the right to terminate this Agreement upon the occurrence of any one of the following events:

(i) City fails to keep, observe, or perform any other material covenant, agreement, term or provision of this Agreement, or the Easement, to be kept, observed or performed by City, and such default continues for a period of thirty (30) days after notice of such default by APQ to City;

(ii) (A) The appointment (voluntary or involuntary) of a receiver, trustee or liquidator of City or of all or a substantial part of its assets; (B) City files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an

arrangement with creditors; (C) City files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding, or insolvency proceeding filed against City; (D) City admits in writing its inability to pay its debts as they come due; (E) City makes a general assignment for the benefit of creditors; or (F) an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating City a bankrupt or insolvent or approving a petition seeking reorganization of City or appointing a receiver, trustee or liquidator of City or of all or a substantial part of the assets of City, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days;

(iii) APQ's right to terminate this Agreement pursuant to this Section 16 shall be exercised upon written notice to City given at any time after the applicable grace period has expired. APQ's termination notice shall specify the effective date of such termination, which date shall not be less than thirty (30) days or more than sixty (60) days after the date of APQ's termination notice.

(c) Intentionally omitted.

(d) **Effect of Termination.** The termination of this Agreement under the provisions of this Section 14 shall be the sole remedy of both Parties.

(e) **Intentionally Omitted.**

(f) **Intentionally Omitted.**

17. Assignment.

(a) Prohibited Assignments. Except as provided in Section 15(b), neither party shall assign this Agreement without the prior written consent of the other party. Said consent shall not be unreasonably withheld, conditioned or delayed. It is understood and agreed that any consent granted by a party to any such assignment shall not be deemed a waiver of any consent required under this Section 15 (a) as to any future assignment.

(b) Permitted Assignment by APQ. APQ shall have the right, without the consent of City, to assign this Agreement to any Affiliate of APQ or in connection with the sale of all or a substantial portion of APQ's assets provided that the key personnel at the Property remains substantially intact and the ownership of any assignee Ryan Leestma is the majority owner of any such affiliate.

(c) Permitted Assignment by City. In connection with the sale or transfer of the Property by City, City shall have the right, without the consent of APQ, to assign this Agreement provided that the purchaser expressly assumes all of City's obligations hereunder in writing.

(d) Successors and Assigns. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

18. Indemnities.

(a) APQ's Indemnity. APQ agrees to indemnify, protect, defend and hold harmless City and its elected officials, officers, employees, agents and volunteers, from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(i) Which result from any act or omission constituting gross negligence or willful misconduct by APQ or any officer, director, or employee of APQ in connection with APQ's performance under this Agreement;

(ii) Which result from any action taken by APQ relating to the Property (A) that is expressly prohibited by this Agreement, or (B) that is not within APQ's delegated authority under this Agreement;

(iii) Which relate to or arise from APQ, through its acts or omissions, depositing, installing or allowing in, on, under or about the Easement Property or the City Property, or the escape, seepage, leakage, spillage, discharge, emission or release, of any hazardous materials, toxic substances or petroleum products (as defined or regulated under any and all applicable federal, state and local environmental, health or safety laws, ordinances and regulations) from or through the Property, including without limitation any and all costs of any required or necessary repair, cleanup, remediation or decontamination of the Property, provided that;

(iv) APQ's indemnity obligations under this Section 16 shall not apply to any acts or omissions taken (or in the case of omissions, not taken) at the written direction of City Commission.

(b) Intentionally Omitted.

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

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

w/copy to
Parmenter Law
601 Terrace Street
Muskegon, Michigan 49440
Attn: City Attorney

To: APQ

1204 W. Western Ave.

Muskegon, Michigan 49440

Attn: Ryan and/or Emily Leestma

Email: rml@leestmamanagement.com esl@leestmamanagement.com

20. Recording. This Agreement shall not be recorded; however, upon the request of either party hereto, the other party shall join in the execution of a memorandum or “short form” of this Agreement for the purposes of recordation. Said memorandum or short form of this Agreement shall incorporate this Agreement by reference. The Parties shall agree upon legal descriptions of the APQ Property and the City Property as surveys are prepared in connection with the development of the Property. This Agreement and its terms constitute covenants running with the land, binding on the Property, the Parties and their successors and assigns, subject to restrictions on assignment.

21. Intentionally omitted.

22. Force Majeure. Notwithstanding anything herein to the contrary, if due to a Force Majeure Event (defined below), APQ and/or City is prevented from timely performing under this Agreement or any third-party providing services or required information in connection with this Agreement (e.g.: lender, appraiser, title company, surveyor, environmental consultants, governmental jurisdictions, etc.) closes its offices, suspends operations or otherwise prevents APQ and/or the City from timely performing under the Agreement as originally contemplated, then the applicable outstanding dates, deadlines or time periods herein, shall each be extended for the duration of the Force Majeure Event and shall resume on such date that APQ and the City, as applicable, are once again able to perform their obligations under this Agreement. To invoke the tolling of time periods as set forth herein for a Force Majeure Event, the applicable party must send written notice to the other party specifying the reason for invocation and the date on which the tolling of time begins, and a subsequent notice shall be delivered to confirm the date the Force Majeure Event ended. The term “Force Majeure Event” as used herein shall mean the following: Act of God; strike, lockout, or other labor or industrial disturbance; war; blockade; public riot; fire; storm; flood; explosion; or other delay caused by unforeseeable circumstances beyond the reasonable control of APQ or the City as applicable, including widespread sickness (including sickness causing quarantine and other “stay at home” or “shelter in place” orders, and including, but not limited to, the Coronavirus Disease 2019 (COVID-19)).

23. Operations of Property. City shall be fully responsible for all operations of the City Property prior to the Effective Date, including, but not limited to, all suits, actions, damages and claims which may be asserted or threatened against the APQ from and after the Effective Date, but which shall have arisen out of any aspect of the City Property prior to the Effective Date. APQ shall be fully responsible for all operations of the APQ Property prior to the Effective Date, including, but not limited to, all suits, actions, damages and claims which may be asserted or threatened against the City from and after the Effective Date, but which shall have arisen out of any aspect of the APQ Property prior to the Effective Date.

24. Severability. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

25. Public Appropriations, Grants, Loans, Third Party Agreements and Charitable Contributions. APQ has applied for, or is anticipating applying for, public appropriations, state and federal grants, loans, charitable agreements and other funding sources to make the improvements referenced in this Agreement and the PUD. The City agrees to cooperate with and assist APQ, if requested by APQ. Examples of funding sources include the following:

- (a) State of Michigan Appropriations including the Department of Natural Resources, Department of Transportation and Department of Energy, Great Lakes and Energy
- (b) US Department of Fish and Wildlife Boating Infrastructure Grant.
- (c) U.S. Department of Fish and Wildlife BIG Grant.
- (d) EGLE Loan.
- (e) EGLE Grant.
- (f) State of Michigan MEDC Grant.
- (g) State of Michigan Brownfield.
- (h) Private donors
- (i) United States Department of Forestry
- (j) United States Department of Agriculture

All proceeds from the above received or applied for by or for APQ that are specifically directed to pay for improvements to APQ or City property;

- (1) if paid to APQ, shall be used by APQ to pay for improvements as defined herein;
or
- (2) to the extent that the proceeds from public grants or loans are paid directly to the City, the City shall disburse the proceeds of such public grants or loans to APQ to pay for improvements using a reimbursement process as defined by the grantor of such funds.

In addition to the foregoing, the City agrees to cooperate with APQ to obtain all available Brownfield reimbursements or other State of Michigan reimbursements, incentives or other available funding arising from or relating to the Development or improvements made in connection therewith.

26. Cooperation. The City and APQ agree that they will use their mutual reasonable efforts to obtain permits from the State of Michigan and the United States of America.

27. Miscellaneous. This Agreement may be amended or modified only by the written agreement of APQ and City. Each exhibit attached to this Agreement is incorporated and made a part of this Agreement as though more fully set forth in this Agreement. If the deadline for performing any act would otherwise fall on a weekend day or a holiday, such deadline shall automatically be extended to the next succeeding business day. This Agreement shall be interpreted under and governed by the laws of the State of Michigan. The Development Agreement approved by the City Commission on October 26, 2021 is void and of no further force or effect.

28. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. Electronically imaged signatures may be used in place of original signatures on this Agreement. APQ and City intend to be bound by the signatures on the electronically imaged document, are aware that the other party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

[Signatures appear on following page]

[Signature Page to Cooperative Development And Use Agreement]

The foregoing Cooperative Development and Use Agreement is accepted and agreed to.

CITY:

CITY OF MUSKEGON,
a Michigan municipal corporation

By: _____
Name: Ken Johnson
Title: Mayor
Date: _____, 2022

By: _____
Name: Ann Meisch
Title: Clerk
Date: _____, 2022

APQ:

ADELAIDE POINTE QOZB, LLC,
a Michigan limited liability company

By _____
Name: _____
Title: _____
Date: _____, 2022

Exhibit A

APQ Property, City Property, Easement Property

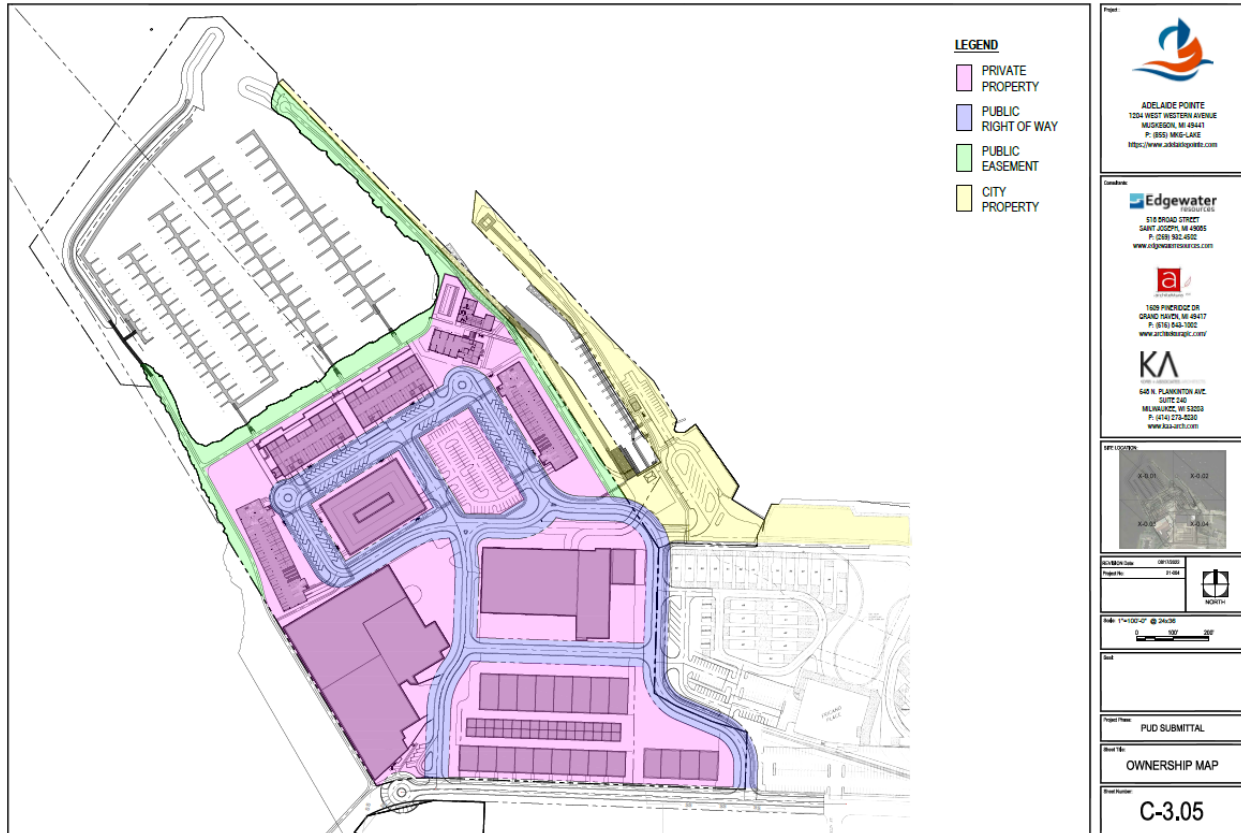


Exhibit B

EASEMENT AGREEMENT

EASEMENT AGREEMENT

THIS EASEMENT is entered into _____, 2022, by **Adelaide Pointe QOZB, LLC**, a Michigan limited liability company (“Grantor”), and the **City of Muskegon**, a Michigan municipal corporation (“City”), with reference to the following facts:

BACKGROUND

- A.** Grantor is the owner of real property in the City of Muskegon, Muskegon County, Michigan (the “Premises” and the “Easement Property” shown on Exhibit A hereto).
- B.** The City desires to obtain and Grantor desires to grant an easement over, on, across, and through a portion of Grantor’s Property for the purpose of providing public access and enjoyment of Muskegon Lake in accordance with the terms of this Agreement.

THEREFORE, for good and valuable consideration, receipt of which is acknowledged, the parties agree as follows:

- 1. GRANT OF EASEMENT.** In consideration of payment by City to Grantor in the amount of One (\$1.00) Dollar and other valuable consideration, Grantor grants, warrants, and conveys an easement to the City for the right of public access to the “Easement Property”, which is depicted as Exhibit A:
- 2. USE OF EASEMENT.** The Easement shall be used to provide the public access to, and enjoyment of, the entire Easement Property. Functions of public access and enjoyment include, but are not limited to access to Muskegon Lake for recreational activities including fishing, park activities, and quiet use and enjoyment.
- 3. MAINTENANCE.** Grantor shall be responsible for the maintenance of the Easement Property. Grantor may not reduce the size of the Easement Property as required for development per the Planned Unit Development approved by City. The City has the right to enter both the Premises and the Easement Property to repair and maintain all public right of ways, including roads, water systems, storm sewer systems, sanitary sewer systems, sidewalks, parks, and landscaping.
- 4. TERM OF EASEMENT.** The term of the Easement shall be perpetual and shall run with the land unless terminated pursuant to Section 5.
- 5. TERMINATION.** This Easement automatically terminates upon termination of the Cooperative Development and Use Agreement to which this Easement is attached as Exhibit B (“Development Agreement”) is terminated.
- 6. EVIDENCE OF TITLE.** Grantor warrants as that it has good title to the Easement Property and the power to grant this Easement.

Furthermore, City may order a commitment for an Owner’s Policy of Title Insurance (the “Commitment”), in an amount determined by the City and issued by a title company to be selected in the sole discretion of City (“Title Escrow Agent”). The Commitment shall show Grantor to hold marketable title in fee simple to the Easement Property free and clear from all liens and encumbrances whatsoever except for: (a) zoning ordinances, (b) easements, agreements and restrictions of record which have been approved by City prior to closing, and (c) real estate taxes due and payable after the closing date.

Grantor may have liens in place by its bank and/or financial partners at any time for any reason and any and all easements must be subordinate and subject to approval and/or revocation by these parties provided all lenders, currently holding a mortgage or obtaining a mortgage in the future shall execute a subordination, non-disturbance agreement with the City which shall require any such lender to acknowledge the existence of this Easement and agree not to interfere with the City's rights under the Easement.

7. ENVIRONMENTAL MATTERS. Grantor agrees to the following:

- (a) Grantor shall provide to City copies of all notices that may be received from any governmental agency involved with any environmental matter, and any responses to such notices.
- (b) Grantor shall promptly provide to City copies of testing results and reports that are generated in connection with environmental matters.
- (c) Intentionally omitted.
- (d) Except as disclosed in writing to, and accepted by City, there are, and shall be no uncured violations including, without limitation, environmental violations of any laws, ordinances, orders, regulations, rules or requirements of any governmental authority, affecting the Easement Property or any part thereof.
- (e) Except as disclosed in writing to the City, no toxic or hazardous substance or waste, including, without limitation, any Hazardous Substance, as defined hereunder, or any federal, state or local environmental law, ordinance, rule or regulation have been used, stored, generated, recycled, treated, released, spilled, discharged, or otherwise disposed of on, in, under, adjacent to or otherwise affecting the Easement Property. Moreover, except as disclosed in the information and documents provided by Grantor to the City, Grantor has not received any notice from any applicable governmental entity of the potential or actual existence of any Hazardous Substance on, in, under, adjacent to, or otherwise affecting the Easement Property.
- (f) There are no underground storage tanks or underground storage tank systems on, in, or under the Easement Property.

For the purposes of this agreement, "Hazardous Substance" means any substance:

- (i) The presence of which requires investigation, remediation, or any other response under any federal, state or local statute, regulation, ordinance, order, action, policy, or common law; or
- (ii) Which is or becomes defined as a "hazardous waste," "hazardous substance," "pollutant", or "contaminant" under any federal, state, or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); or
- (iii) Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency, or instrumentality of the United States, the State of Michigan, or any political subdivision thereof.
- (iv)

8. NO INTERRUPTION. Grantor shall make all reasonable efforts to avoid any interruption of the use of the Easement Property and any occupants thereof and visitors thereto, and if such interruption is not avoidable, Grantor shall minimize such interruption and shall repair as soon as possible any damage to the Easement Property occasioned by the performance of any obligation in this section.

For safety and liability reason, the City shall not object to the temporary lack of use of the easement property while construction and/or development activities are taking place.

9. INSURANCE. Grantor shall maintain reasonable insurance policies with respect to its activities and those of its agents and representatives at any time on the Easement Property and shall take all necessary and appropriate precautions for the safety of the occupants of and visitors to the Easement Property.

10. INTENTIONAL OMITTED.

11. WARRANTY. The parties warrant that they have the right and authority to enter into this Easement Agreement. Grantor further warrants that all statements and information relating to the Easement Property provided to the City are true and accurate.

12. BINDING EFFECT. This Easement Agreement shall bind the parties and their successors and assigns.

13. ASSIGNMENT OR DELEGATION. Except as otherwise specifically set forth in this Agreement, neither party shall assign all or any portion of its rights and obligations contained in this Agreement without the express or prior written approval of the other party, in which approval may be withheld in the other party's sole discretion.

14. COUNTERPARTS. This Agreement may be executed in counterparts, and each set of duly delivered identical counterparts which includes all signatories, shall be deemed to be one original document.

15. FULL EXECUTION. This Agreement requires the signature of all parties. Until fully executed, on a single copy or in counterparts, this Agreement is of no binding force or effect and if not fully executed, this Agreement is void.

16. NON-WAIVER. No waiver by any party of any provision of this Agreement shall constitute a waiver by such party of any other provision of this Agreement.

17. SEVERABILITY. Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be impaired or affected.

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

Notices shall be sent to the parties as follows:

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

w/copy to

Parmenter Law
601 Terrace Street
Muskegon, Michigan 49440
Attn: City Attorney

To: Grantor:

1204 W. Western Ave.
Muskegon, Michigan 49440
Attn: Ryan and/or Emily Leestma
Email: rml@leestmamanagement.com esl@leestmamanagement.com

- 19. AMENDMENT.** This Easement Agreement shall not be amended or modified except in a writing signed by both parties.
- 20. GOVERNING LAW.** This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.
- 21. VENUE AND JURISDICTION.** The parties agree that for purposes of any dispute in connection with this agreement, the Muskegon County Circuit Court shall have exclusive personal and subject matter jurisdiction and that Muskegon County is the exclusive venue
- 22. ELECTRONIC SIGNATURES.** The parties agree that electronic copies of the signed Agreement shall constitute a valid, enforceable agreement.
- 23. PRONOUNS.** Nouns and pronouns will be deemed to refer to the masculine, feminine, neutral, singular and plural, as the identity of the person or persons, firm, or corporation may in the context require.
- 24. ENTIRE AGREEMENT.** This Easement Agreement and Exhibit A and the Development Agreement constitute the entire agreement as to this matter between the parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter of this Easement Agreement.
- 25. RECORDING OF MEMORANDUM.** Upon the execution hereof, Grantor and City shall execute and cause to be recorded with the Muskegon County Register of Deeds a memorandum hereof in form reasonably acceptable to Grantor. All recording charges and any stamp or similar tax shall be paid by City. Upon the expiration or earlier termination of this agreement, Grantor and City shall cooperate to execute a recordable termination of same. Grantor shall pay the recording charges and any stamp or similar tax to terminate this agreement.

This Easement Agreement was entered into on the date set forth above.

Signature Page to Easement Agreement

Grantor:

Adelaide Pointe QOZB,
a Michigan limited liability company

By: _____

Name: Ryan Leestma

Title: _____

Date: _____

City:

City of Muskegon,
a Michigan Municipal corporation

By: _____

Name: Ken Johnson

Title: Mayor

Date: _____

By: _____

Name: Ann M. Meisch

Title: City Clerk

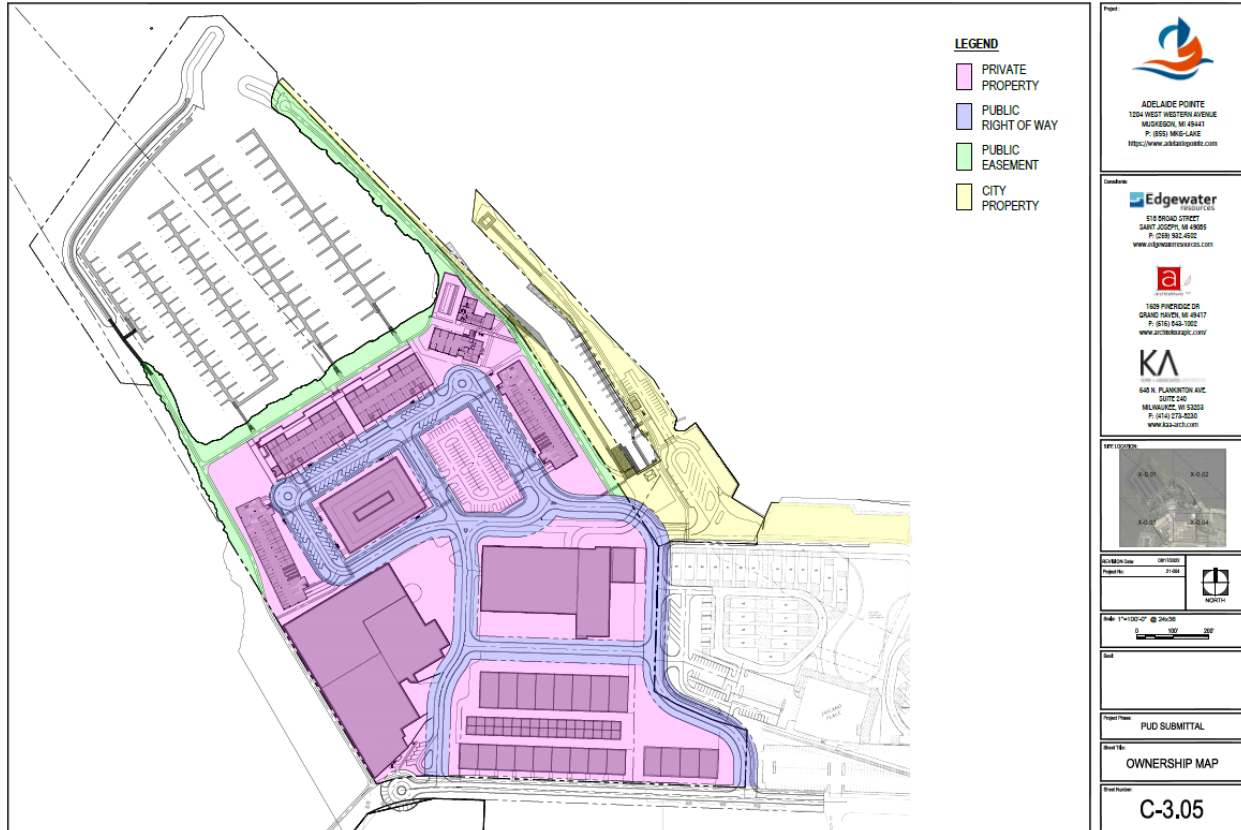
Date: _____

Drafted By and when Recorded Return to:

John Schrier
Parmenter Law
Muskegon, MI 49440
601 Terrace Street
231-722-5418

Exhibit A

APQ Property, City Property, Easement Property



WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: September 13, 2022		Title: Designation of Voting Delegates for the Michigan Municipal League Annual Meeting			
Submitted By: Ann Marie Meisch, City Clerk		Department: City Commission			
Brief Summary: To designate, by action of the Commission, one of our officials who will be in attendance at the Convention as an official representative to cast the vote of the municipality at the Annual Meeting; and, if possible, to designate one other official to serve as an alternate.					
Detailed Summary & Background:					
Goal/Focus Area/Action Item Addressed: <i>Refer to the 2022-2027 Long Term Goals document.</i>					
Amount Requested: N/A		Amount Budgeted:			
Fund(s) or Account(s):		Fund(s) or Account(s):			
Recommended Motion: To appoint an official representative, _____, and an alternate representative, _____, to be in attendance and to cast the vote of the municipality at the Annual Business meeting of the Michigan Municipal League Convention.					
Approvals: <i>Get approval from division head at a minimum prior to sending to the Clerk.</i>		Guest(s) Invited / Presenting			
Immediate Division Head	☐	Information Technology	☐	Yes	☐
Other Division Heads	☐	Communication	☐	No	☐
Legal Review	☐				
For City Clerk Use Only: Commission Action:					

July 18, 2022

Michigan Municipal League Annual Meeting Notice

(Please present at the next Council, Commission or Board Meeting)

Dear Official:

The Michigan Municipal League Annual Convention will be held in Muskegon, October 19-21, 2022. The League's "Annual Meeting" is scheduled for 4:30 pm on Wednesday, October 19 in Section D meeting room at the VanDyk Mortgage Convention Center. The meeting will be held for the following purposes:

1. Policy. A) To vote on the Core Legislative Principles document.

In regard to the proposed League Core Legislative Principles, the document is available on the League website at <http://www.mml.org/delegate>. If you would like to receive a copy of the proposed principles by fax or email, please call Monica Druksis at the League at 800-653-2483.

B) If the League Board of Trustees has presented any resolutions to the membership, they also will be voted on. (See #1 on page 2.)

In regard to resolutions, member municipalities planning on submitting resolutions for consideration by the League Trustees are reminded that under the Bylaws, they must be submitted to the Trustees for their review by September 18, 2022.

2. Other Business. To transact such other business as may properly come before the meeting.

Designation of Voting Delegates

Pursuant to the provisions of the League Bylaws, you are requested to designate by action of your governing body one of your officials who will be in attendance at the Convention as your official representative to cast the vote of the municipality at the Annual Meeting, and, if possible, to designate one other official to serve as alternate. Please submit this information through the League website by visiting <http://www.mml.org/delegate> no later than September 18, 2022.

We love where you live.



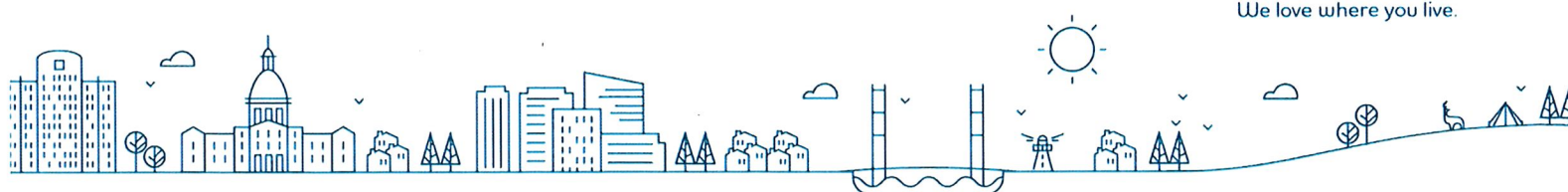
Regarding the designation of an official representative of the member to the annual meeting, please note the following section of the League Bylaws:

“Section 4.4 - Votes of Members. Each member shall be equally privileged with all other members in its voice and vote in the election of officers and upon any proposition presented for discussion or decision at any meeting of the members. Honorary members shall be entitled to participate in the discussion of any question, but such members shall not be entitled to vote. The vote of each member shall be cast by its official representative attending the meeting at which an election of officers or a decision on any proposition shall take place. Each member shall, by action of its governing body prior to the annual meeting or any special meeting, appoint one official of such member as its principal official representative to cast the vote of the member at such meeting, and may appoint one official as its alternate official representative to serve in the absence or inability to act of the principal representative.”

1. Statements of Policy and Resolutions

Regarding consideration of resolutions and statements of policy, under Section 4.5 of the League Bylaws, the Board of Trustees acts as the Resolutions Committee, and “no resolution or motion, except procedural and incidental matters having to do with business properly before the annual meeting or pertaining to the conduct of the meeting, shall be considered at the annual meeting unless it is either (1) submitted to the meeting by the Board of Trustees, or (2) submitted in writing to the Board of Trustees by resolution of the governing body of a member at least thirty (30) days preceding the date of the annual meeting.” Thus, the deadline this year for the League to receive resolutions is September 18, 2022. Please submit resolutions to the attention of Daniel P. Gilmartin, Executive Director/CEO at 1675 Green Rd., Ann Arbor, MI 48105. Any resolution submitted by a member municipality will go to the League Board of Trustees, serving as the resolutions committee under the Bylaws, which may present it to the membership at the Annual Meeting or refer it to the appropriate policy committee for additional action.

Further, “Every proposed resolution submitted by a member shall be stated in clear and concise language and shall be accompanied by a statement setting forth the reasons for recommending the proposed resolution. The Board shall consider the proposal at a Board meeting prior to the next annual meeting and, after consideration, shall make a recommendation as to the advisability of adopting each such resolution or modification thereof.”



2. Posting of Proposed Resolutions and Core Legislative Principles

The proposed Michigan Municipal League Core Legislative Principles and any new proposed Resolutions recommended by the Board of Trustees for adoption by the membership will be available on the League website, or at the League registration desk to permit governing bodies of member communities to have an opportunity to review such proposals and delegate to their voting representative the responsibility for expressing the official point of view of the member at the Annual Meeting.

The Board of Trustees will meet on Wednesday, October 19 at 4:30 pm in the Delta Hotel for the purpose of considering such other matters as may be requested by the membership, in addition to other agenda items.

Sincerely,



Barbara Ziarko
President
City Council, Sterling Heights



Daniel P. Gilmartin Executive
Director & CEO

