

CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 27, 2019 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
- ☐ **CITY MANAGERS REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Cooperation Agreement – Disability Network West Michigan** City Manager
 - C. 1531 Beidler Street Sale** City Manager
 - D. Opportunity Zone Incentive Program** Economic Development
 - E. Approval of a Neighborhood Enterprise Zone Certificate – 301 Terrace Point** Planning & Economic Development
 - F. Zoning Ordinance Amendment – Critical Dunes** Planning & Economic Development
 - G. Amendment to PILOT – Gencap 1021 Jefferson Limited Dividend Housing Association, LLC** Planning & Economic Development
 - H. Certification of MERS Representatives** Finance
 - I. Transformer Replacement – Harvey Station** DPW – Filtration
 - J. Relocating Power pole to Harvey Station** DPW – Filtration
 - K. MTU PLC Programming Services** DPW – Filtration

- L. **Fleet Vehicle Replacement – Chevy Traverse** DPW – Equipment
- M. **Fleet Vehicle Replacement – Chevy Impala** DPW – Equipment
- N. **Notice of Intent to Bond Resolution for Scattered Housing Development**
Finance

☐ **PUBLIC HEARINGS:**

- A. **Request to Establish an Obsolete Property District – 1208 8th Street**
Planning & Economic Development
- B. **Request to Issue an Obsolete Property Certificate – Core Development Corp, LLC** Planning & Economic Development

☐ **COMMUNICATIONS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

- A. **Designation of Voting Delegates for the Michigan Municipal League Annual Business Meeting** City Clerk
- B. **Request to Create a New Neighborhood Enterprise Zone District at 292 W Western Avenue** Planning & Economic Development
- C. **Approval of a Neighborhood Enterprise Zone Certificate – 292 W. Western**
Planning & Economic Development
- D. **Updates to MERS Defined Benefit Plan Adoption Agreements** Finance
- E. **Revised City Commission Rules and Procedures** Office of the Mayor

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

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

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

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

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: August 27, 2019

Regular Session:

1. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. Approval of the cooperation agreement with Disability Network West Michigan. This item was discussed at the last work session. The total cost is \$7,500, and the organization has agreed to engage with other advocates and residents in the process.
 - c. We are seeking approval to sell 1531 Beidler Street. This is a property that we acquired via tax reversion. We put some resources into determining the viability of the home as a remodel/resale. We have determined that the home would be difficult for our team to undertake and still sell at an affordable price for the market. We planned to demolish the property. In the meantime, we were approached by a local resident that was familiar with the house. After hearing that we were going to demolish it, he reached out to us through the CNS department to inquire about purchasing and rehabbing it himself. The new owner would be a first time homeowner in Muskegon. Staff is excited to help the owner preserve the site, as that particular block does need some investment.
 - d. We are seeking approval of the opportunity zone incentive program that was presented at the work session earlier this month.
 - e. Approval of an NEZ certificate for 301 Terrace Street. The new owner is investing in excess of \$400,000 in the new home.
 - f. Approval of the final changes to the critical dune ordinance, as requested by DEQ.
 - g. Approval of an amendment to the PILOT for 1021 Jefferson. This property was set aside for affordable workforce housing. Their request for housing tax credits was not approved by MSHDA, and we believe these changes will strengthen their application for later this fall.
 - h. Certification of MERS representative to attend this year's MERS conference. Each year, we send a city representative and an employee group representative.

- i. Approval of the replacement of a transformer at Harvey Street lift station. The low bidder is Muskegon-based Newkirk Electric.
 - j. Approval of the relocation of a power pole from the water filtration plant, at a cost of \$11,450.
 - k. Approval of the professional services agreement with Tetrattech in the amount of \$16,000 for water filtration plant programming services.
 - l. Approval of the purchase of one Chevy Traverse for \$30,396.
 - m. Approval of the purchase of one Chevy Impala for \$22,843.
 - n. Approval of a bonding resolution for the scattered site brownfield program (Midtown Square 2). Originally, we hoped to use the Land Bank's funds. After further examination, we feel we can save significant costs by using the city's local bank (PNC). The only catch is that we need to do a notice of intent with a 45 day waiting period before borrowing the dollars. Approval of this notice should put us in a position to have access to capital in the next 60 days, and also allow Dusendang to break ground on the houses later this month.
2. Public Hearings
- a. We are seeking to create an Obsolete Property District to facilitate the redevelopment of 1208 8th Street.
 - b. We are seeking to issue an Obsolete Property Certificate to Core Development for their project at 1208 8th Street.
3. New Business
- a. We are seeking to identify voting delegates for the MML conference next month. This was included on the consent agenda last meeting, but no Commissioners were named as delegates. So, we need to reissue the resolution.
 - b. We are seeking to create a new enterprise zone certificate at 292 West Western Ave. to facilitate the development of a six-story mixed-use building.
 - c. We are seeking to issue the NEZ certificate to Sweetwater Development in connection with their planned development at 292 West Western Ave.
 - d. We are seeking to make a number of changes to the MERS plan documents. These requests came after a routine MERS audit uncovered a number of missing agreements. Making these changes will bring the city into compliance with practices that have taken place since our move to MERS in 2006.
 - e. We are seeking approval of the updated commission rules and procedures. This item was the result of Commission discussion/direction at the July Legislative Policy Meeting.

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

Frank

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve the minutes of the August 12, 2019 Worksession and August 13, 2019 Regular Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, August 12, 2019
5:30 p.m.
City Commission Chambers

MINUTES

Present: Mayor Gawron, Vice-Mayor Hood (arrived 5:36), Commissioners Turnquist, Johnson, and German

Absent: Commissioners Rinsema-Sybenga and Warren

Disability Network of West Michigan – Brad Hastings, Presentation

Brad Hastings, Disability Network of West Michigan, presented information to the City Commission regarding a proposed cooperation agreement. DNWM will help the City and its customers to meet the minimum requirements of the Construction Coded and the ADA and continue to education and influence toward implementing new best practices that incorporate Universal Design concepts. This will be accomplished by providing training and technical assistance to City staff and its customers. This work is aimed at increasing the inclusiveness and accessibility of our built environment and realizing the ultimate vision of access for all, regardless of ability.

Lease of Yuba Street Property to the Community Foundation for Muskegon County

Lease a portion of the old farmer's market property to the Community Foundation for Muskegon County for up to 5 years with an option to purchase. The lease includes approximately 7 of the total 15.3 acre site and the majority of the buildable land. The property will be used to develop a food processing incubator and business development center targeted at stage one or two entrepreneurial companies or existing mature companies looking for an offsite location for test manufacturing of new products.

This item will appear on the City Commission's Regular meeting agenda for Tuesday, August 13, 2019.

Public Meeting Training

Approve funding for training on managing civil, productive public meetings. Beth Buelow and a co-facilitator will lead a four session training target department and division heads as well as the mayor and commissioners with the objective of preparing us to present information and manage interactions in a proactive, positive, and productive manner. Additional workshops will be offered to neighborhood associations with the objective to provide them tools to communicate and collaborate with city leaders. Training is expected to be scheduled fall of 2019.

This item will appear on the City Commission's Regular meeting agenda for Tuesday, August 13, 2019.

Lakeside Business Improvement District

Discussion of a resolution to be adopted establishing a Business Improvement District for the Lakeside Commercial District along Lakeshore Drive from 1595 Lakeshore (Wasserman's Flowers) to 2801 Lakeshore (Muskegon County Club). The boundaries are outlined in the map as the district are those commercial properties with frontage on Lakeshore Drive. It is also requested that the commission establish an initial Lakeside BID board with the following recommended individuals as offered by the Lakeside District Association:

Troy Wasserman – Wasserman's Flowers, 1595 Lakeshore
Richard Ghezzi – Ghezzi's Market, 2017 Lakeshore
Mark Flermoen – VF Ventures, 1845 Lakeshore
Michael Kordecki – Marine Tap Room, 1983 Lakeshore
Ann Funk – Auto Body Clinic, 2054 Lakeshore
Blake Evans – Water's Edge Fitness, 2465 Lakeshore
City Manager (by statute) – City of Muskegon

This item will appear on the City Commission's Regular meeting agenda for Tuesday, August 13, 2019.

Opportunity Zone Incentive Program

The City of Muskegon is fortunate to have its entire downtown corridor within an Opportunity Zone. The Economic Development Department is recommending additional localized, Commission reviewed incentives in order to encourage large scale investment in this competitive market.

This item will appear on the City Commission's Regular meeting agenda for Tuesday, August 13, 2019.

Recreational Marihuana

Discussion took place regarding license types, excise tax fund, fees, the district, temporary events, proposed essentially 3 areas within the current MMFLA district for recreational licensees.

Suburban Nation Review – Chapter 3

Discussion of Chapter 3 of the Suburban Nation focusing on housing.

Adjournment – The Worksession Meeting adjourned at 9:48 p.m.

Respectfully Submitted,

Ann Marie Meisch, City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 13, 2019 @ 5:30 P.M.

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

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, August 13, 2019, Commissioner Willie German, Jr. opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Byron Turnquist, Ken Johnson, and Willie German, Jr., City Manager Frank Peterson, City Attorney John Schrier, and Deputy City Clerk Kimberly Young.

Absent: Commissioners Debra Warren and Dan Rinsema-Sybenga

HONORS AND AWARDS:

A. Presentation of 2019 Beautification Awards

Recipients of the Residential and Business 2019 Neighborhood Beautification Awards were recognized for their effort in making the city a beautiful place. Those present were presented with a Certificate of Recognition.

2019-62 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the July 23, 2019 Regular Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

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

SUMMARY OF REQUEST: 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.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

C. Adopt a Resolution Approving the Reclassification of a Tavern License to a Class C License for Port City Cruise Lines, LLC City Clerk

SUMMARY OF REQUEST: To adopt a resolution approving the reclassification of a Tavern License to a Class C License for Port City Cruise Lines, LLC at 560 Mart Street.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt the resolution approving the license reclassification.

D. Adopt a Resolution Approving the Off-Premises Tasting Room License for Wonderland Distilling Co. City Clerk

SUMMARY OF REQUEST: To adopt a resolution approving an Off-Premises Tasting Room License & Permit Application for Wonderland Distilling Co., 1989 Lakeshore Drive.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt the resolution approving the license.

E. Memorandum of Understanding – Justice Assistance Grant Public Safety

SUMMARY OF REQUEST: The Director of Public Safety requests that the Commission authorize the Director and the City Manager to enter into an agreement with the City of Muskegon Heights and Muskegon County in regards to the disbursement of the FY 2019 Justice Assistance Grant. It is further requested that the Mayor be authorized to sign the Memorandum of Understanding. Note that time is of the essence as this grant requires a governing body review period and the grant submission and the grant deadline is August 23rd.

Although the Bureau of Justice Assistance has designated us as being in a disparate funding situation due to the County providing more than 50% of the jail facilities, our proposal is to keep the allocations exactly as they initially came down from the BJA which is as follows: County of Muskegon \$0; City of

Muskegon \$20,463 and City of Muskegon Heights \$14,732. Not that BJA uses crime data versus population in making these allocation decisions.

The City of Muskegon portion is planned to be used in continuation of the manner in which the previous year's JAG funding was used which is for the prosecution of city ordinance cases dealing primarily with neighborhood issues.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of this request.

F. 2019 Verizon/Central Dispatch License Agreement Public Safety

SUMMARY OF REQUEST: The Public Safety Department is requesting approval for Comcast to construct, replace, maintain, repair, operate, inspect, augment and remove communication system from the Central Fire Station Building.

Central Dispatch and Comcast require this agreement to begin the upgrade to the Central Dispatch 9-1-1 phone communication system. The agreement includes all facilities necessary or useful for distributing upgraded communication services.

Peninsula Fiber Network has subcontracted Comcast to complete the fiber optic utility work. The License Agreement has an initial term of ten (10) years, beginning on the effective date and will automatically renew for two (2) successive periods of five (5) years each.

FINANCIAL IMPACT: \$0.00 Cost covered by Peninsula Fiber Network.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the license agreement.

G. LC Walker Arena – Ironmen Lease City Manager

SUMMARY OF REQUEST: City staff is requesting approval of the lease to allow the West Michigan Ironmen to play indoor football at the LC Walker Arena for five seasons, beginning in 2020.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To authorize the Clerk and Mayor to sign the lease with Muskegon Football.

H. Water Main Easement Department of Public Works

SUMMARY OF REQUEST: Authorize the DPW Director and City Clerk to sign the private water main easement with 2420 Remembrance Drive LC.

The easement allows for installation of a privately-owned water main across a section of city owned property that fronts on Black Creek Road. The water main

is being installed to provide fire protection via a hydrant on the site that is being developed by KL Industries for warehouse and storage and serves no other public purpose.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize the DPW Director and City Clerk to sign the easement.

I. DPW Roofing Department of Public Works

SUMMARY OF REQUEST: Award the contract for roofing of Section #1 at the DPW Building to the low bidder Ostrander Roofing in the amount of \$141,494.00.

This will repair the front section of roofing at DPW primarily over the office areas of the building, which has suffered from several leaks over the last year.

FINANCIAL IMPACT: \$141,494.00

BUDGET ACTION REQUIRED: None. This project was included in the 19-20 Budget.

STAFF RECOMMENDATION: Award the contract to Ostrander Roofing.

J. Industrial Park Lift Station Pump Department of Public Works

SUMMARY OF REQUEST: Authorize staff to purchase a replacement pump for the Industrial Park sewer lift station at a cost of \$16,333 from Kennedy Industries (sole supplier).

Due to wear and tear the pump motor died and needs to be replaced. The pump is 20 years old and was nearing the end of its life expectancy.

FINANCIAL IMPACT: \$16,333

BUDGET ACTION REQUIRED: None. This project was included in the 19-20 budget (Lift Station Repairs).

STAFF RECOMMENDATION: Approve the purchase of a replacement pump from Kennedy Industries.

L. Opportunity Zone Incentive Program Economic Development

REMOVED PER STAFF REQUEST

O. Acceptance of Property from Muskegon County Planning & Economic Development

SUMMARY OF REQUEST: Accept the quit claim deed from Muskegon County for property at 1390 Henry Street commonly referred to as the Carpenter Brothers site.

DPW and Planning staff have been working with the West Michigan Shoreline

Regional Development Commission and the County to design a green infrastructure project on the parcel. The project will treat a portion of the City's stormwater prior to the outlet at Rotary Park, and City staff will be responsible for maintenance since it serves our stormwater system.

The parcel also includes the downtown Bark Park and the DDA has taken responsibility for maintenance of that facility.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Accept the quit claim deed.

P. Lease of Yuba Street Property to the Community Foundation from Muskegon County Planning & Economic Development

REMOVED PER STAFF REQUEST

Q. Sale of the Buildable Lot at 1245 5th Street Planning & Economic Development

SUMMARY OF REQUEST: Staff is seeking approval to sell the vacant, buildable lot at 1245 5th Street to Bethany Housing Ministries, Inc., dba Community EnCompass for \$1 with the understanding that they will sell us their vacant buildable lot at 174 Mason Avenue for \$1. The deal would be contingent upon the City receiving verification of a clean title commitment and any backup documents.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the sale and for the Mayor and Clerk to sign the resolution and deed.

R. Community Relations Committee Establishment of Farmers Market Advisory Board City Clerk

SUMMARY OF REQUEST: To establish the Farmers Market Advisory Board.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the recommendation of the Community Relations Committee and establish the Farmers Market Advisory Board.

S. Community Relations Committee Appointment Recommendations City Clerk

SUMMARY OF REQUEST: To accept appointments as follows:

Accept the appointments of:

Ron Hayward to the Neighborhood Association Representative position on the Citizen Police Review Board.

Karen Evans to the Mayor/City Commission Appoint Position on the District Library Board.

Kimberly Williams to the Citizen Representative from Ward 4 position on the Equal Opportunity Committee.

Larry Boersma, Dianne Snow, Jon Visser, and John Zandstra to the Seasonal Farmers positions on the Farmers Market Advisory Board.

Kristin Johnson and Kathi Upman to the Seasonal Crafters/Artisans positions on the Farmers Market Advisory Board.

Woody Van Blargan to the Seasonal Food Vendor position on the Farmers Market Advisory Board.

Melanie Lyonnais and Cindy Larsen to the Citizens At Large positions on the Farmers Market Advisory Board.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

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

Motion by Commissioner Johnson, second by Commissioner German, to approve the consent agenda as presented, except item K, M, and N.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, and German

Nays: None

MOTION PASSES

2019-63 ITEMS REMOVED FROM CONSENT AGENDA:

K. Public Meeting Training Development Services

SUMMARY OF REQUEST: Approve funding for training on managing civil, productive public meetings. Beth Buelow and a co-facilitator will lead a four-session training targeting department and division heads as well as the mayor and commissioners with the objective of preparing us to present information and manage interactions in a proactive, positive, and productive manner. Additional workshops will be offered to neighborhood associations with the objective to provide them tools to communicate and collaborate with city leaders. Training is expected to be scheduled fall of 2019.

FINANCIAL IMPACT: \$10,000

BUDGET ACTION REQUIRED: Will be included in the next quarterly forecast.

STAFF RECOMMENDATION: Approve funding for public meeting training.

Motion by Commissioner German, second by Commissioner Johnson, to approve funding for public meeting training.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, and German

Nays: None

MOTION PASSES

M. Lakeside Business Improvement District (BID) Initial Resolution Planning & Economic Development

SUMMARY OF REQUEST: We are requesting the resolution be adopted establishing a Business Improvement District for the Lakeside commercial district along Lakeshore Drive from 1595 Lakeshore (Wasserman's Flowers) to 2801 Lakeshore (Muskegon Country Club). The boundaries are outlined in the attached map as the district are those commercial properties with frontage on Lakeshore Drive. It is also requested that the commission establish an initial Lakeside BID Board with the following recommended individuals as offered by the Lakeside District Association:

Troy Wasserman – Wasserman's Flowers, 1595 Lakeshore

Richard Ghezzi – Ghezzi's Market, 2017 Lakeshore

Mark Flermoen – VF Ventures, 1845 Lakeshore

Michael Kordecki – Marine Tap Room, 1983 Lakeshore

Ann Funk – Auto Body Clinic, 2054 Lakeshore

Blake Evans – Water's Edge Fitness, 2465 Lakeshore

City Manager (by statute) – City of Muskegon

FINANCIAL IMPACT: The city can anticipate receiving approximately 15 percent of the proceeds that would be an administrative fee for staff support if the BID is established and the BID board concurs.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To adopt the resolution as presented.

Motion by Commissioner Johnson, second by Commissioner German, to adopt the resolution establishing a Business Improvement District for the Lakeside Commercial District along Lakeshore Drive inclusive of the recommended individuals offered by the Lakeside District Association.

Amendment

Motion by Commissioner Johnson, second by Commissioner German, to amend the district by removing 2275, 2311, 2363, 2371, 2400, 2425, 2441, and 2801 Lakeshore Drive from the District.

ROLL VOTE: Ayes: Hood, German, Turnquist, Johnson, and Gawron

Nays: None

MOTION PASSES

ON ORIGINAL MOTION (AS AMENDED)

ROLL VOTE: Ayes: Johnson, Gawron, Hood, German, and Turnquist

Nays: None

MOTION PASSES

N. Sale of Lots 3 & 4 of Seaway Industrial Park Planning & Economic Development

SUMMARY OF REQUEST: To approve the sales of lots 3 & 4 of Seaway Industrial Park to Adam McCausland for \$292,000. The lots total 3.4 acres and are zoned I-1, Light Industrial and are also located in the Medical Marihuana Overlay District.

FINANCIAL IMPACT: The sale of this lot will generate additional tax revenue for the City and will place the property back on the City's tax rolls thus relieving the City of continued maintenance costs.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the resolution and purchase agreement and to authorize both the Mayor and Clerk to sign the deed.

Motion by Commissioner German, second by Commissioner Johnson, to approve the resolution and purchase agreement and to authorize both the Mayor and Clerk to sign the deed.

ROLL VOTE: Ayes: Gawron, Hood, German, Turnquist, Johnson

Nays: None

MOTION PASSES

2019-64 NEW BUSINESS:

A. Convention Center – Site and Utilities Bid Pack City Manager

SUMMARY OF REQUEST: City staff is requesting acceptance of the letter of recommendation from Clark Construction awarding Concrete, Electrical Hotel Power, and Earthwork to Cascade Cement Contracting, Newkirk Electric, and Accurate Excavators, respectively at a total cost of \$2,386,258. Approving these three bids will allow Clark to move toward the anticipated August 22 commencement of work, while finalizing the remaining bid packages in anticipation of awarding the remainder of the contract at the August 27 City Commission Meeting.

FINANCIAL IMPACT: \$2,386,285 to be funded with bond proceeds.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize the City Manager to accept the recommendation and award the contracts as described.

Motion by Commissioner Johnson, second by Commissioner German, to authorize the City Manager to accept the recommendation and award the contracts as described.

ROLL VOTE: Ayes: Turnquist, Johnson, Gawron, Hood, and German

Nays: None

MOTION PASSES

ANY OTHER BUSINESS:

A. Appoint LeighAnn Mikesell as alternate to Wastewater Advisory Board
City Manager

City Manager, Frank Peterson, requested that the Commission appoint LeighAnn Mikesell as voting alternate to the Wastewater Advisory Board. Currently Leo Evans is the City's Representative and Frank Peterson is the alternate. A meeting is coming up to vote on the budget and neither will be able to attend.

Motion by Vice Mayor Hood, second by Commissioner Johnson, to appoint LeighAnn Mikesell as alternate to the Wastewater Advisory Board.

ROLL VOTE: Ayes: German, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

Commissioner Comments were received.

PUBLIC PARTICIPATION: Public Comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 7:04 p.m.

Respectfully Submitted,

Kimberly Young, Deputy City Clerk

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners
FROM: Frank Peterson, City Manager
DATE: August 22, 2019
RE: Cooperation Agreement – Disability Network West Michigan

SUMMARY OF REQUEST:

City staff is requesting approval of the attached service proposal from Disability Network West Michigan. The proposal will allow Disability Network to assist the city with an accessibility audit, as well as technical assistance during the design process on various city/community projects.

FINANCIAL IMPACT:

\$7,500

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To authorize the City Manager to accept the proposal and sign the contract.

COMMITTEE RECOMMENDATION:

None.

COOPERATION BETWEEN
THE CITY OF MUSKEGON
AND
DISABILITY NETWORK WEST MICHIGAN

Disability Network West Michigan
27 E. Clay Ave.
Muskegon, MI 49442
231.722.0088

City of Muskegon Planning Department

Statement of Purpose

The City of Muskegon (City) and Disability Network West Michigan (DNWM) are committed to upholding the intent and spirit along with the letter of the Americans with Disabilities Act (ADA) and the Michigan Barrier Free Design Rules as incorporated in the Michigan Construction Code and to continue the discussion about and inclusion of Universal Design concepts. Through this cooperative agreement, DNWM will help the City and its customers (a) to meet the minimum requirements of the Michigan Construction Code and the ADA and (b) to continue education and influence toward implementing new best practices that incorporate Universal Design concepts. This will be accomplished by providing training and technical assistance to City staff and its customers. All of this work is aimed at increasing the inclusiveness and accessibility of our built environment and realizing the ultimate vision of access for all, regardless of ability.

Scope of Work

Disability Network West Michigan agrees to perform the following services:

- A. Audit the accessibility of downtown Muskegon and present the findings to the City **Commission**. Findings would include curb cuts, accessible parking, sidewalks, intersections and entrances to maximize movement for people with disabilities.

- B. Audit the accessibility of City owned properties, including buildings, parks, and parking lots.
- C. The provision of technical assistance during the Design Team process to achieve compliance with the Michigan Construction Code and the ADA along with the incorporation of Universal Design concepts into sites and buildings, as invited by City staff.
- D. The provision of technical assistance on individual projects for City staff, architects, builders & developers, and business owners. Projects will be selected with City staff focusing primarily on:
 - those that are of significant size and scope and
 - those that present particular design challenges and opportunities
 - can include panel feedback from individuals with technical expertise and individuals with disabilities, moderated by DNWM.
- E. Follow up on the implementation of recommended solutions to assess whether accessibility and Universal Design components are being incorporated as planned.
- F. Technical review and recommendations on City planning documents,
- G. Trainings for City staff and other stakeholders on the accessibility requirements of current codes and Universal Design concepts. (Topics will be decided upon by City staff in consultation with Disability Network West Michigan.)

Cost & Reporting

Not to exceed \$7,500 (seven thousand five hundred dollars)

Disability Network West Michigan's staff time will be invoiced at \$30 per hour no more than monthly. In addition, each invoice will include which service has been provided, e.g. technical assistance or training, along with a report on the work completed and its outcome (the level of detail on this reporting will be agreed to by City staff).

Estimated total hours to be invoiced: 250

Schedule

To be completed by June 15, 2020.

Signature section

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: August 21, 2019

RE: 1531 Beidler Street Sale

SUMMARY OF REQUEST:

City staff is requesting approval of the attached Quit Claim Deed to sell 1531 Beidler to Alfredo Fajardo Godoy for \$1.00. This property was acquired via tax reversion. Subsequent staff analysis determined that the time commitment to the property's renovation exceeded the city's abilities, and staff began to prep the structure for demolition. Mr. Godoy is a renter in the area and inquired about rehabilitating the property into an owner-occupied home for his family. He has met with SAFEbuilt on site and they have a tentative plan for renovation that includes immediately replacing the roof, installing new internal structural supports, and completing exterior landscaping. The remainder of the renovation will take 6-9 months. Staff recommends providing Mr. Godoy the opportunity to purchase and save the structure.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To authorize the Mayor and Clerk to sign the Quit Claim Deed.

COMMITTEE RECOMMENDATION:

None.

Order Confirmation

Date: August 14, 2019

City of Muskegon

Fx:

Email:

RE: 1531 Beidler, Muskegon, MI 49441

Buyer or Borrower:

Seller: City of Muskegon

Thank you for your order

Please accept this as confirmation that we have received your order request.

We have processed your order under the following file number: **283831LKR**

Please contact us if you have any questions or are in need of additional service.

Sincerely,

Transnation Title Agency of Michigan Lakeshore Division
570 Seminole Road, Suite 102
Muskegon, MI 49444
Ph: 231-737-9111

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS: That the **CITY OF MUSKEGON**, a Municipal Corporation, of 933 Terrace Street, Muskegon, Michigan 49440,

QUIT CLAIMS TO: **ALFREDO FAJARDO GODOY**, a single man, of 1901 Commerce Street, Muskegon, Michigan 49441,

the following described premises situated in the City of Muskegon, County of Muskegon, State of Michigan, to wit:

CITY OF MUSKEGON REVISED PLAT OF 1903 NORTH 82.25 FEET OF LOTS 10 & 11 EXCLUDING THE WEST 10 FEET OF NORTH 41.5 FEET LOT 11 BLOCK 413.

Otherwise known as 1531 Beidler St. Parel # 24-205-413-0010-00

for the sum of: One Dollar (\$1.00)

This deed is exempt from real estate transfer tax pursuant to the provisions of MCLA 207.505(h)(i) and MCLA 207.526 Sec. 6(h)(i).

Dated this ____ day of August 2019

Signed in the presence of:

CITY OF MUSKEGON

By _____
Stephen Gawron, Its Mayor

and _____
Ann Marie Meisch, MMC, Its Clerk

STATE OF MICHIGAN
COUNTY OF MUSKEGON

The foregoing instrument was acknowledged before me this ____ day of August 2019, by STEPHEN GAWRON and ANN MARIE MEISCH, MMC, the Mayor and Clerk, respectively, of the CITY OF MUSKEGON, a municipal corporation, on behalf of the City.

PREPARED BY: Hope Mitchell
City of Muskegon
933 Terrace St Room 202
Muskegon, MI 49440
Telephone: (231) 724-6702

_____, Notary Public
Acting in the County of Muskegon, MI
Muskegon County, MI
My Comm. Expires: _____

**WHEN RECORDED RETURN TO:
GRANTEE**

**SEND SUBSEQUENT TAX BILLS TO:
GRANTEE**

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners
FROM: Jake Eckholm, Director of Economic Development
DATE: August 27th, 2019
RE: Opportunity Zone Incentive Program

SUMMARY OF REQUEST:

The City of Muskegon is fortunate to have its entire downtown corridor within an Opportunity Zone. The Economic Development Department is recommending additional localized, Commission reviewed incentives in order to encourage large scale investment in this competitive market.

FINANCIAL IMPACT:

None at this time, all incentives would be paid out 15 years after the eligible Opportunity Zone Investment.

Funds would be allocated and reserved based on new income tax created and property tax collection increases as a result of opportunity fund investments, such as new apartment/housing buildings or businesses.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To authorize the incentive package as presented.

A handwritten signature in black ink, appearing to read "Jake Eckholm", is written in a cursive style.

CITY OF MUSKEGON OPPORTUNITY ZONE

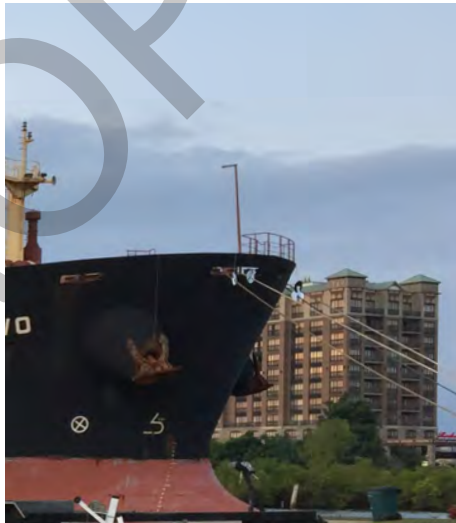


Claiming the distinction of “West Michigan’s Shoreline City”, Muskegon is the largest city on the eastern shore of Lake Michigan with a population just under 40,000. In addition to having the largest beach on Michigan’s west coast, Muskegon also contains miles of lakefront along the south shore of Muskegon Lake. The city is located 180 miles northeast of Chicago, 190 miles west of Detroit, and 80 miles due east of Milwaukee.

Today, Muskegon is a progressive city and has an appreciation for its significant history while continuing forward growth and movement in creating a new identity for itself. The casual and friendly atmosphere allows the local resident, vacationer, or fisherman to truly kick back, relax and enjoy.

The city’s core neighborhoods contain a series of sites primed for redevelopment. A former school, once embedded in its neighborhood, offers the opportunity to again serve as a community anchor. Redevelopment of old school buildings is not unfamiliar to the area, as a variety of repurposed facilities have brought new life to their respective communities.

As Muskegon’s industrial past makes way for a mixed-use future, large waterfront sites have become available for redevelopment. Moving from east to west: the centrally located Harbor 31 site, the expansive acreage of the Western Waterfront district, and the vacant, former Tank Farm property are all well-positioned to benefit from the area’s unmatched natural amenities as well as its reviving downtown.



Downtown Muskegon is in the midst of major reinvestment. The removal of a renewal-era, urban shopping mall has made available much vacant land in the heart of the city. The Morris Street property offers significant acreage in the downtown core, two blocks from

the available AmeriBank Building; both are sited just minutes from the lakeshore and other recreational opportunities. With a clear vision for the future, Downtown Muskegon is on course to become the hub of the city, county, and beyond.

For more information please visit our website: www.shorelinecity.com

OPPORTUNITIES IN THE CITY OF MUSKEGON

- WESTERN WATERFRONT
- FOUNDRY SQUARE
- VACANT SCHOOL BUILDING
- HARBOR 31
- AMERIBANK BUILDING
- TANK FARM PROPERTY

Grants, loans, and tax abatements are also available. The owner or developer should coordinate with the City of Muskegon to determine which incentives are most appropriate for their development project. Please contact:

LeighAnn Mikesell
Director of Municipal Services
933 Terrace Street
Muskegon, MI 49443
(231) 724-6702
leighann.mikesell@shorelinecity.com

MUSKEGON OPPORTUNITY ZONE INCENTIVES

SETTING MUSKEGON APART

1. An environment of investor confidence. Proposed projects will not be delayed or derailed by zoning, regulation, or politics:
 - A one-stop shop for all opportunity zone issues – connection person/team for opportunity zone questions, ideas, incentives, etc.
 - Form Based Code – limited applicability of planning commission and city commission
 - Redevelopment Ready Community Certified
 - One-stop meetings and pre-development meetings
2. Updated zoning/codes to expedite projects:
 - Form Based Code
 - Imagine Muskegon Lake Plan
3. Clear local investment strategy:
 - Updated City Waterfront Plan
 - Updated Zoning Codes
 - 2014 Muskegon Farmers Market
 - 2020 Muskegon Convention Center

CITY-FOCUSED SPENDING IN OPPORTUNITY ZONES

1. Brownfield Incentives
2. Utility Investment
3. Downtown Development Authority

Mixed-Use Development Investment Match: The first \$75 Million in qualified opportunity fund investment deployed on a new mixed-use development within a City of Muskegon Opportunity Zone shall be eligible to receive a match equal to 2% of the initial eligible investment.

Opportunity Fund Investment	Incentive Amount
\$1,000,000	\$20,000
\$5,000,000	\$100,000
\$15,000,000	\$300,000
Note: Matching dollars are paid upon successful completion of the investment and satisfaction of the initial 10-year holding period	

Missing Middle Housing Development Investment Match: The first \$25 Million in qualified opportunity fund investment deployed in new “missing-middle” housing within a City of Muskegon Opportunity Zone shall be eligible to receive a match equal to 3.5% of the initial eligible investment.

Opportunity Fund Investment	Incentive Amount
\$1,000,000	\$35,000
\$5,000,000	\$175,000
\$10,000,000	\$350,000
Note: Matching dollars are paid upon successful completion of the investment and satisfaction of the initial 10-year holding period	

Neighborhood Housing Development Investment Match: The first \$10 Million in qualified opportunity fund investment deployed in new single-family housing (attached and detached) within a City of Muskegon Opportunity Zone shall be eligible to receive a match equal to 3% of the initial eligible investment.

Opportunity Fund Investment	Incentive Amount
\$1,000,000	\$30,000
\$5,000,000	\$150,000
\$10,000,000	\$300,000
Note: Matching dollars are paid upon successful completion of the investment and satisfaction of the initial 10-year holding period	

Port-Related Industrial Redevelopment Incentives: The first \$25 Million in qualified opportunity fund investment deployed in new port facilities (buildings) located on current city-owned property within a City of Muskegon Opportunity Zone shall be eligible to receive a match equal to 5% of the initial eligible investment.

Opportunity Fund Investment	Incentive Amount
\$1,000,000	\$50,000
\$5,000,000	\$250,000
\$25,000,000	\$1,250,000
Note: Matching dollars are paid upon successful completion of the investment and satisfaction of the initial 15-year holding period	

Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Approval of a Neighborhood Enterprise Zone Certificate –
301 Terrace Point

SUMMARY OF REQUEST:

An application for a Neighborhood Enterprise Zone (NEZ) certificate has been received from John Spruit for the new construction of a home at 301 Terrace Point. The estimated cost for construction is \$414,636. The applicant has met local and state requirements for the issuance of the NEZ certificate.

FINANCIAL IMPACT:

Taxation will be applied as one-half of the previous year's state average principal residence millage rate to the value of the facility.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the NEZ certificate.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by John Spruit to construct a home at 301 Terrace Point in the Terrace Point Condominium neighborhood, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the local unit of government is allowing the six (6) month grace period after construction commencement to apply, which is allowed under the law;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for twelve (12) years;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for the new construction of a home by Robert Heminger be approved.

Adopted this 27th day of August, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on August 27, 2019.

By: _____

Ann Meisch
City Clerk

Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Zoning Ordinance Amendment – Critical Dunes

SUMMARY OF REQUEST:

Staff initiated request to amend section 2310 of the zoning ordinance to make minor changes to the critical dune ordinance.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their August 15 meeting.

SUMMARY

1. The Michigan Department of Environment, Great Lakes & Energy (EGLE) asked that we make a couple of minor amendments to our Critical Dune ordinance to better reflect their model zoning ordinance. The changes are more clerical and will not change how we enforce our procedures.
2. Please see the comments from the EGLE email below.
3. Please see the revised Critical Dune ordinance enclosure.

EMAIL FROM EGLE

On March 26, 2019 the City of Muskegon was sent a list of questions and required changes needing to be addressed before approval by the Department of Environment, Great Lakes, and Energy (EGLE) Water Resources Division (WRD). An ordinance was submitted to WRD for approval on June 7, 2019 by the City. This letter details items that require changes in the current version of the ordinance before EGLE approval.

1. The ordinance version dated February 13, 2019 included subsection 13, Site Plan Review, meeting the requirements of MCL 324.35321(a) and (b). The ordinance version dated June 7, 2019 does not include a subsection for Site Plan Review. Explain why the Site Plan Review subsection was removed. Identify the ordinance subsection(s) meeting MCL 324.35321(a) and (b).
2. On March 26, 2019 the City was asked to address the following in the ordinance:

“4. Include the language of Subsection 35304(1)(g) in Site Plan Review. Specifically, the permit shall be approved unless the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following: the diversity, quality or functions of the critical dune areas within the local unit of government.”

Explain why this review criteria language was added to Subsection 5 Application Requirements of the ordinance.

3. The year of Public Act 451 is mistyped in the ordinance. The correct year is 1994. Correct the year to 1994 throughout the ordinance.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2310 of the zoning ordinance to update the Critical Dune ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

SECTION 2310: CRITICAL DUNES

1. Purpose. In keeping with the findings of the Michigan legislature and the authority granted to local government in Public Act 451 of 1994, as amended, the City of Muskegon hereby declares that:
 - a. The critical dune areas within the City of Muskegon are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this community, to the state, and to the people from other states and countries who visit this resource.
 - b. The purpose of this ordinance is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this ordinance is intended to do all of the following:
 - Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
 - Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
 - Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.
 - Determine that the proposed use will ensure and enhance the diversity, quality, function and values of the critical dune in a manner that is compatible with private property rights; allows for compatible economic development and multiple human uses of the critical dune, using the most competent, accurate and reliable information and scientific data available.
 - c. The benefits derived from alteration, industrial, residential, commercial, agricultural, sylvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.
 - d. The following regulations embodied in this Dune Overlay Zone are adopted as the minimum measures necessary to achieve these ends.
2. Definitions – As used in this section,
 - a. "Accessibility measures" means a circulation path and at least 1 entrance on a circulation path complying with American national standards institute chapter 4 standards for accessible routes, from a road or easement serving the property, and, at the option of the applicant, from

a sidewalk, a driveway, or a garage. As used in this section, accessibility measures do not include driveways.

- b. "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining.
- c. "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.
- d. "Critical dune area" means a geographic area designated in the "Atlas of Critical Dune Areas" dated February 1989 that was prepared by the Michigan Department of Natural Resources and any other locally designated sand dune areas included on the City of Muskegon Zoning Map.
- e. "Driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.
- f. "Foredune" means one or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.
- g. "Permit" means a permit for a use within a critical dune area.
- h. "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.
- i. "Sand dune mining" means the removal of sand from sand dune areas for commercial or industrial purposes.
- j. "Special use project" means any of the following:
 - A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.
 - A multifamily use of more than 3 acres.
 - A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.
 - A proposed use in a critical dune area, regardless of size of the use, that the planning commission determines would damage or destroy features of archaeological or historical significance.
- k. "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining.

3. Area Affected.

- a. The provisions of the Dune Overlay Zone apply to all lands so depicted on the City of Muskegon Zoning Map which is a part of this ordinance. These lands include the entire critical dune area as designated by the Michigan Department of Natural Resources pursuant to Public Act 451 of 1994, and to such other lands as locally designated and depicted thereon. Locally designated sand dunes together with dunes designated under Public Act 451 shall be known as critical dune areas for the

purpose of this ordinance. Lands that are within 250 feet of a critical dune area, that are determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall also receive all the protection afforded to critical dunes in the Overlay Zone, even if not so depicted on the City of Muskegon Zoning Map.

- b. Any lot or parcel which in whole or part which falls within the Dune Overlay Zone and/or within 250 feet outside the Dune Overlay Zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall not be used except upon receipt of a permit from the Zoning Administrator. No zoning permit shall be issued for the use of land within this zone or within 250 feet outside the zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area until a site plan meeting the requirements of this Section and those of Article XXIII, Section 2330, have been met. If requested, the Planning Commission will make the final determination as to whether or not these standards have been met and shall exercise its lawful discretion in all cases in favor of protection of the critical dune area.
- c. Except as provided in subsection 11 (e), a permit shall provide that a use that is a structure shall be constructed behind the crest of the first landward ridge of a critical dune area that is not a foredune. However, if construction occurs within 100 feet measured landward from the crest of the first landward ridge that is not a foredune, the use shall meet all of the following requirements:
 - i. The structure and access to the structure shall be in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan shall provide for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - ii. Access to the structure shall be from the landward side of the dune.
 - iii. The dune shall be restabilized with indigenous vegetation.
 - iv. The crest of the dune shall not be reduced in elevation.

4. Nonconforming Building and Lots After the effective date of the adoption of this Section:

- a. No subdivision or condominium development shall occur within the Dune Overlay Zone except in compliance with the minimum standards of this ordinance and after review and approval of a site plan and other documents as required herein.
- b. No structure shall be constructed, reconstructed, altered, or relocated except in strict compliance with the requirements of this ordinance.
- c. No use which is in existence as of the effective date of this Article shall be expanded, except in strict compliance with the minimum standards of this Ordinance.
- d. No existing nonconforming building or structure shall be altered except provided in Article XXII, Section 2203.

5. Application Requirements. A site plan review must be conducted before the issuance of a permit.

- a. Uses that have received all necessary permits from the state or the City by July 5, 1989, are exempt for purposes for which a permit is required. Such uses shall be regulated pursuant to local ordinances in effect by that date.
- b. All applications for permits for the use of a critical dune area shall include in writing showing evidence:

- i. That Muskegon County, which administers Part 91 Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, as amended, finds that the project is in compliance with the act and any applicable soil erosion and sedimentation control ordinance that is in effect in Muskegon County.
 - ii. That a proposed sewage treatment or disposal system on the site has been approved by the county health department, if applicable.
 - iii. Assuring that the cutting and removing of trees and other vegetation will be performed according to the forestry management guidelines for Michigan prepared by the Society of American Foresters in 1987, as revised in 2010, and will include instructions or plans to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation on the site than were removed by the proposed use.
 - iv. Except as otherwise provided in this subsection, a site plan that contains data required by this Section and Article XXIII, Section 2330, concerning the physical development of the site and extent of disruption of the site by the proposed development.
 - v. The payment of any required fees for processing and/or professional review of the submitted site plan.
- c. The Zoning Administrator shall not require an environmental site assessment or environmental impact statement as part of a permit application for a use in a critical dune overlay zone except for a "Special Use" project.
- d. The Zoning Administrator will require that the applicant supply a contour map of the site with one foot contour intervals at or near any proposed structure or roadway for any new construction.
- e. The City shall provide notice of an application filed under this section to each person who makes a written request to the City for notification of pending applications. The City may charge an annual fee for providing this notice. The City shall prepare a monthly list of the applications made during the previous month and shall promptly provide copies of the list for the remainder of the calendar year to the persons who have requested notice. Notice of an application shall also be given to the local conservation district office, the county clerk, the county health department. The monthly list shall state the name and address of each applicant, the location of the applicant's project, and a summary statement of the purpose of the use. The City may hold a public hearing on pending applications.
- f. The notice shall state that unless a written request is filed with the City within 20 days after the notice is sent, the City may grant the application without a public hearing. Upon the written request of two or more persons who own real property within two miles of the project, the City shall hold a public hearing pertaining to a permit application.
- g. At least 10 days notice of a hearing to be held pursuant to this section shall be given by publication in one or more newspapers of general circulation in the county, and by providing notice to the persons who have requested notice and to the person requesting the hearing.
- h. After the filing of an application, the City shall grant or deny the permit within 60 days, or within 90 days if a public hearing is held. If a permit is denied, the City shall provide to the applicant a concise written statement of its reasons for denial of the permit, and if it appears that a minor modification of the application would result in the granting of the permit, the nature of the modification shall be stated. In an emergency, the City may issue a conditional permit before the expiration of the 20-day period.

6. Environmental Assessment. When an environmental assessment is required under a “Special Use” project, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the application’s proprietary interest in the site.
 - c. The name, address, and professional qualification of the person preparing the environmental assessment and his/her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.
 - d. The description and purpose of the proposed use.
 - e. The location of existing utilities and drainage ways.
 - f. The general location and approximate dimensions of proposed structures.
 - g. Major proposed change of land forms such as new lakes, terracing or excavating.
 - h. Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
 - i. Approximate location and type of proposed drainage, water, and sewage facilities.
 - j. Legal description of property.
 - k. A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
 - l. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
 - m. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
7. Environmental Impact Statement. When an environmental assessment is required, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the applicant's proprietary interest in the site of the proposed use.
 - c. The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
 - d. The description and purpose of the proposed use.
 - e. Six copies and one reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
 - f. The location of the existing utilities and drainage ways.
 - g. The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
 - h. The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.
 - i. The general location and approximate dimensions of proposed structures.
 - j. Major proposed change of land forms such as new lakes, terracing, or excavating.
 - k. Approximate existing and proposed contours and drainage patterns, showing at least five-foot contour intervals.
 - l. Sketches showing the scale, character, and relationship of structures, streets, or driveways, and open space.

- m. Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- n. A legal description of the property.
- o. An aerial photo and contour map showing the development site in relation to the surrounding area.
- p. A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- q. A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "United Soil Classification System" as adopted by the United States Government Corps of Engineers and Bureau of Reclamation, dated January 1952, or the natural cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.
- r. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- s. A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.
- t. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
- u. At a minimum, plans for compliance with all of the following standards shall be required for construction and post-construction periods:
 - Surface drainage designs and structures are erosion proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design in order that drainage waters may be impeded in their flow and percolation encouraged.
 - The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.
 - Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.
 - If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it shall be the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, and windbreaks and other similar barriers.

8. Driveways. The construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this ordinance or a lawful nonconforming use, subject only to applicable permit requirements under Sections 35312 through 35325 of Part 353 of Public Act 451 of 1994, as amended, and the following:

- a. A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this ordinance. Additional driveways, if any, shall meet the applicable requirements for any other use under this ordinance. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record

- b. Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- c. Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- d. Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

9. Utilities. A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this section or under Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, is exempt for purposes for which the permit was issued from the operation of this section if the maintenance, repair, or replacement is completed in compliance with all of the following:

- a. Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
- b. All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
- c. Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
- d. To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
- e. In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.

- f. In the cases of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.
10. Accessibility. Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements under Sections 35312 through 35325 of Part 353 of Public Act 451 of 1994, as amended, and the following:
 - a. Accessibility measures on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restablization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements.
 - b. Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restablization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

The choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

11. Prohibited Uses. The following uses are not permitted in a critical dune area:
 - a. The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
 - b. A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323 of Public Act 451 of 1994.
 - c. A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.
 - d. Production facilities regulated under parts 615 and 625 of Act 451 of 1994, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.

- e. A permit shall not be granted that authorizes construction of a dwelling or other permanent building on the first lakeward facing slope of a critical dune area or foredune except on a lot of record that was recorded prior to July 5, 1989 that does not have sufficient buildable area landward of the crest to construct the dwelling or other permanent building as proposed by the applicant. The proposed construction, to the greatest extent possible, shall be placed landward of the crest. The portion of the development that is lakeward of the crest shall be placed in the location that has the least impact on the critical dune area

12. Non-Permitted Uses, Unless a Variance is Granted. Unless a variance is granted, the following uses are not permitted in a critical dune area:

- a. A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
- b. A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
- c. A use involving a contour change if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
- d. Sylvicultural practices, as described in the "Forest Management Guidelines for Michigan", prepared by the Society of American Foresters as revised in 2010, if the City of Muskegon determines that they are more likely than not to increase erosion or decrease stability.
- e. A use that involves a vegetation removal if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.

13. Site Plan Review. When reviewing a site plan submitted, along with all the application information required, the Zoning Administrator shall:

- a. Ensure that the requirements of the zoning ordinance have been met and the plan is consistent with existing laws.
- b. Determine whether the advice or assistance of Muskegon County will be helpful in reviewing a site plan, and if so, to so seek it.
- c. Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to ensure compliance with all applicable state and local requirements.
- d. A permit shall be approved unless the local unit of government or the department determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - i. The diversity of the critical dune areas within the local unit of government.
 - ii. The quality of the critical dune areas within the local unit of government.
 - iii. The functions of the critical dune areas within the local unit of government.

14. Prohibition of Construction Without Permit. No grading or clearing of a site shall be done prior to issuance of a zoning permit as required in this Ordinance.

15. Special Use Project Review Procedures. A proposed special use project shall be reviewed and a recommendation for approval, approval with conditions, or denial is made by the Planning Commission pursuant to the special use procedures of this ordinance shall be completed.
16. Department of Environmental Quality Review. Prior to issuing a permit allowing a special use project within a critical dune area, the Planning Commission shall submit the special use project application and site plan and their proposed decision to the Department of Environmental Quality, Water Resources Division following the procedures of this ordinance.
17. Nonconforming Uses. The lawful use of land or a structure, as existing and lawful within a critical dune area in the time of the adoption of this overlay zone, may be continued although the use of that land or structure does not conform to the provisions of this overlay zone. The continuance, completion, restoration, reconstruction, extension or substitution of existing nonconforming uses of land or a structure may continue consistent with the nonconforming use requirements of this Ordinance. See Article XXII, Section 2202.
18. Rebuilding of Lawful Structures. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, may be rebuilt or replaced if the structure or use was lawful at the time it was constructed or commenced; and a replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
19. Variance. The Zoning Board of Appeals may grant a variance from the requirements of this overlay zone if a practical difficulty will occur to the owner of the property if the variance is not granted. The procedural requirements of Article XXIII (Site Plan Review) and Article XXV (Zoning Board of Appeals) shall be adhered to. A variance shall be subject to the following limitations:
 - a. The Zoning Board of Appeals may issue variances under Article XXV of the zoning ordinance if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this Section unless the Zoning Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - The diversity of the critical dune areas within the local unit of government.
 - The quality of the critical dune areas within the local unit of government.
 - The functions of the critical dune areas within the local unit of government.
 - b. The decision of the Zoning Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in Section 75 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - That the City of Muskegon has met the burden of proof under the Variance section of this ordinance.

- That the decision is based upon sufficient facts or data.
 - That the decision is the product of reliable scientific principles and methods.
 - That the decision has applied the principles and methods reliably to the facts.
 - That the facts or data upon which the decision is based are recorded in the file.
- c. The City of Muskegon shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
- d. A variance shall not be granted from a setback requirement provided for under Section 35034 pursuant to Part 353 of the Public Act 451 of 1994 unless the property for which the variance is requested is one of the following:
- A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of Part 353.
 - A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
 - Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.
20. Request for Revaluation to Determine Fair Market Value. If a permit for a proposed use within a critical dune area is denied, the landowner may request a revaluation of the affected property for assessment purposes to determine its fair market value under the restriction.
21. Penalties. In addition to the penalty provisions of this Ordinance, the provisions of Public Act 451 of 1994 shall apply in the event of any violation. Pursuant to the Public Act, a court may impose on a person who violates any provision of this Dune Overlay Zone, or a provision of a permit issued hereunder, a civil fine of not more than \$5,000 for each day of violation, or order a violator to pay the full cost of the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. If a person is ordered by the Zoning Administrator to restore a critical dune that has been degraded by that person, the Zoning Administrator shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.
22. Surety Bond. The City may require the holder of a permit to file with the City a bond executed by an approved surety in this state in an amount necessary to assure faithful conformance with the permit.
23. Applicable Law. Incorporated by reference herein is Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.
24. Severability. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The City Commission hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid. However, if any provision of the Ordinance is declared invalid, the City must seek written confirmation from the DEQ that the Ordinance still complies with Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 27th day of August, 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2019.

Ann Meisch, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on August 27, 2019, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2310 of the zoning ordinance update the Critical Dune ordinance.

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

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

Published _____, 2019.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to PILOT – Gencap 1021 Jefferson Limited
Dividend Housing Association, LLC

SUMMARY OF REQUEST:

The City Commission approved a Payment in Lieu of Taxes (PILOT) for Gencap 1021 Jefferson Limited Dividend Housing Association, LLC on February 26, 2019. The development will include 73 residential units and 2,300 sf of commercial space. There will be 55 one-bedroom units and 18 two-bedroom units. Ten units will be at 30% AMI, nine units will be at 40% AMI, 11 units will be low-income disability units, 14 units will be at 60% AMI and 29 units will be at 80% AMI. A service charge of 4% will be imposed, as well as a municipal services fee of 2%. As directed by the Michigan State Housing Development Authority (MSHDA), the developer is requesting a few minor changes to the agreement that reiterates that the development will be for low income persons and families, not seniors.

FINANCIAL IMPACT:

Although the PILOT for the project will be less than the taxes captured for a similar market-rate project, the situation with this particular property is that the contribution towards the City will be greater to the City with the development under a PILOT than it is as a vacant lot. In addition, taxes would apply to the commercial square footage within the building.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the attached revised "Contract for Housing Exemption."

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
2019-12(B)
FIRST AMENDED AND RESTATED CONTRACT FOR HOUSING EXEMPTION

This First Amended and Restated Agreement between **GENCAP 1021 JEFFERSON LIMITED DIVIDEND HOUSING ASSOCIATION, LLC**, a Michigan limited liability company (the “Developer”) and **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, Michigan (the “City”) is made pursuant to the following terms:

RECITALS

A. The City and Developer previously entered into a Contract for Housing Exemption dated February 26, 2019 by the City and executed on March 5, 2019 by the Developer;

B. The parties agree to amend and restate the Contract for Housing Exemption in its entirety;

C. The City has adopted Chapter 82, Article II “Taxation” of the City Code of Ordinances, providing for tax exemption (the “Ordinance”); and provide for a service charge in lieu of taxes for a housing project for Low Income Persons and Families to be financed with a Federally-Aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et. seq.)(the”Act”);

D. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption;

The City acknowledges that the Sponsor (as defined below) has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to construct/acquire and rehabilitate, own and operate a housing project identified as 1021 Jefferson Street Apartments on certain property located at 1021 Jefferson Street in the City (the “Project”) to serve Low Income Persons and Families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all *ad valorem* property taxes;

E. Developer has acquired an option to purchase a site in the City of Muskegon (1021 Jefferson Street) for the construction of a proposed low-income housing project for Low Income Persons and Families;

F. Developer and an affiliate of Developer, to be formed, have or will enter into an agreement to form a limited dividend housing association limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as GenCap 1021 Jefferson Limited Dividend Housing Association, LLC;

G. The City encourages construction and financing of the said low-income housing project which is identified by the working name of 1021 Jefferson Street;

H. To further enable and encourage the construction of the housing project, Developer and the City enter into this Agreement; and

I. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS AND THE RECITALS ARE INCORPORATED HEREIN BY REFERENCE:

1. Definitions.

1.1 “Authority” means the Michigan State Housing Development Authority.

1.2 “Annual Shelter Rents” means the total collections during an agreed annual period from or paid on behalf of all occupants of a housing project representing rent or occupancy charges, exclusive of Utilities.

1.3 “Contract Rents” means the total Contract Rents (as defined by the U.S. Department of Housing and Urban Development in regulations promulgated pursuant to Section 8 of the U.S. Housing Act of 1937, as amended) received in connection with the operation of a housing project during an agreed upon annual period, exclusive of Utilities.

1.4 “Low Income Persons and Families” means persons and families eligible to move into a housing project.

1.5 “Low Income Housing Tax Credits” means credits allocated under Section 42 of the Internal Revenue code (“LIHTC”).

1.6 “Mortgage Loan” means a Federally-Aided Mortgage (as defined in Section 11(c) of the Act) or loan or grant made or to be made by the Authority to the Sponsor for the construction and/or permanent financing of the housing project, and secured by a mortgage on the housing project.

1.7 “Sponsor” means General Capital Development, LLC and any entity that receives or assumes a Mortgage Loan.

1.8 “Utilities” means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the “Act”), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible Low Income Persons and Families as defined by the Authority.

3. Term of Exemption. This exemption shall continue for the period of time the housing units remain subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Codes of 1986, as amended (IRS Codes), or the Authority Regulatory Agreement not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is financed by the Authority or receives low income housing tax credits under Section 42 of the IRS Codes, provided that the said Mortgage Loan or a loan originally financed by the low income housing tax credits continues outstanding as more particularly set forth in Section 82-50(3) of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Developer. The Developer agrees to perform the following:

4.1 The Developer shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1, of each year during the time the exemption is in effect. The service charge shall equal four percent (4%) of the rents charged for the total of all units in the exempt housing project, whether the units are occupied or not and whether or not the rents are paid.

4.2 The Developer agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority’s administration of the low income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31, as required by the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, and 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that the use of low income housing tax credits constitutes financing of the loan by the Authority in fulfillment of the requirements of Section 82-50(3) of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority

as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance

7. Payment of Service Charge. The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before April 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, *et seq*).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 3, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than Low Income Persons or Families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Effective Date. The effective date of this Agreement is the date that Developer or its assignee completes construction and receives a temporary or permanent certificate of occupancy from the City for the Property.

12. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

13. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

14. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. 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 venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

City of Muskegon

Dated: _____, 2019

By: _____
Stephen J. Gawron, Mayor

Dated: _____, 2019

By: _____
Ann Meisch, Clerk

**GENCAP 1021 JEFFERSON
LIMITED DIVIDEND HOUSING
ASSOCIATION LIMITED
PARTNERSHIP, LLC**

By: GenCap 1021 Jefferson MM,
LLC, a Wisconsin limited liability
company, its Sole Member

Dated: _____, 2019

By: General Capital Management,
Inc, a Wisconsin corporation, its
Manager

By: _____
David Weiss, CEO

**CITY OF MUSKEGON
2019-12(B)**

FIRST AMENDED AND RESTATED CONTRACT FOR HOUSING EXEMPTION

This First Amended and Restated Agreement between **GENCAP 1021 JEFFERSON LIMITED DIVIDEND HOUSING ASSOCIATION, LLC**, a Michigan limited liability company (the “Developer”) and **CITY OF MUSKEGON**, 933 Terrace Street, Muskegon, Michigan (the “City”) is made pursuant to the following terms:

RECITALS

A. The City and Developer previously entered into a Contract for Housing Exemption dated February 26, 2019 by the City and executed on March 5, 2019 by the Developer;

B. The parties agree to amend and restate the Contract for Housing Exemption in its entirety;

A.C. The City has adopted Chapter 82, Article II “Taxation” of the City Code of Ordinances, providing for tax exemption (the “Ordinance”); and provide for a service charge in lieu of taxes for a housing project for ~~low~~-Low Income ~~senior persons~~-Persons and ~~families~~ Families to be financed with a Federally-Aided Mortgage Loan or an advance or grant from the Authority pursuant to the provisions of the State Housing Development Authority Act of 1966 (1966 PA 346, as amended; MCL 125.1401, et. seq.)(the”Act”);.

B.D. It is acknowledged that it is a proper public purpose of the State of Michigan and its political subdivisions to provide housing for its low income persons and families and to encourage the development of such housing by providing for a service charge in lieu of property taxes in accordance with the Act. The City is authorized by this Act to establish or charge the service charge to be paid in lieu of taxes by any or all classes of housing exempt from taxation under this Act at any amount it chooses, not to exceed the taxes that would be paid but for this Act. It is further acknowledged that such housing for low income persons and families is a public necessity, and as the City will be benefited and improved by such housing, the encouragement of the same by providing real estate tax exemption for such housing is a valid public purpose. It is further acknowledged that the continuance of the provisions of this Ordinance for tax exemption and the service charge in lieu of all *ad valorem* taxes during the period contemplated in this Ordinance are essential to the determination of economic feasibility of the housing projects that is constructed with financing extended in reliance on such tax exemption;.

The City acknowledges that the Sponsor (as defined below) has offered, subject to receipt of an allocation of Low Income Housing Tax Credits and/or receipt of a Mortgage Loan from the Michigan State Housing Development Authority, to construct/acquire and rehabilitate, own and operate a housing project identified as 1021 Jefferson Street Apartments on certain property located at 1021 Jefferson Street in the City (the “Project”) to serve ~~low~~-Low income ~~Income persons~~-Persons and ~~families~~Families, and that the Sponsor has offered to pay the City on account of this housing project an annual service charge for public services in lieu of all ad valorem property taxes;.

C.E. Developer has acquired an option to purchase a site in the City of Muskegon (1021 Jefferson Street) for the construction of a proposed low-income housing project ~~(for the elderly)~~ as defined in City Section 82-46 of the Ordinance for Low Income Persons and Families;

D.F. Developer and an affiliate of Developer, to be formed, have or will enter into an agreement to form a limited dividend housing association limited liability company to function as owner of the proposed low-income housing Project. The owning entity to be formed will be identified as GenCap 1021 Jefferson Limited Dividend Housing Association, LLC;

E.G. The City encourages construction and financing of the said low-income housing project which is identified by the working name of 1021 Jefferson Street;

F.H. To further enable and encourage the construction of the housing project, Developer and the City enter into this Agreement; and

G.I. The legal description of the Project is set forth in Exhibit A attached to this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS AND THE RECITALS ARE INCORPORATED HEREIN BY REFERENCE:

1. Definitions.

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1.7 “Sponsor” means General Capital Development, LLC and any entity that receives or assumes a Mortgage Loan.

1.8 “Utilities” means charges for gas, electric, water, sanitary sewer and other utilities furnished to the occupants that are paid by the housing project.

2. Grant of Exemption. As contemplated and pursuant to Act 346 of the Public Acts of 1966, as amended, the State Housing Development Authority (the “Act”), the City hereby grants an exemption from all ad valorem property taxes attributable to the buildings which consist of rental units offered to eligible ~~low~~-Low income-Income persons-Persons and ~~families~~-Families as defined by the Authority.

3. Term of Exemption. This exemption shall continue for the period of time the housing units remain subject to income and rent restrictions pursuant to Section 42 of Internal Revenue Service Codes of 1986, as amended (IRS Codes), or the Authority Regulatory Agreement not to exceed 25 years. The City agrees to be contractually bound by this Agreement to honor the exemption status of the proposed project as provided herein and in this Agreement for the entire period during which the Project is financed by the Authority or receives low income housing tax credits under Section 42 of the IRS Codes, provided that the said Mortgage Loan or a loan originally financed by the low income housing tax credits continues outstanding as more particularly set forth in Section 82-50(3) of the Ordinance, not to exceed 25 years.

4. Responsibilities of the Developer. The Developer agrees to perform the following:

4.1 The Developer shall pay the service charge and payment in lieu of all ad valorem taxes on or before July 1, of each year during the time the exemption is in effect. The service charge shall equal four percent (4%) of the rents charged for the total of all units in the exempt housing project, whether the units are occupied or not and whether or not the rents are paid.

4.2 The Developer agrees to file all information required by the Ordinance and further to meet its obligations to the Authority in connection with the Authority’s administration of the low income housing tax credit program.

4.3 In lieu of the requirement to submit a statement of annual shelter rents and/or contract rents within 30 days after December 31, as required by the Ordinance, Developer shall submit an annual audit by April 1st. If not timely filed, and 30 days after notice to Developer of said delinquency, a penalty of 1.25% of the service charge shall be imposed. This penalty shall be collectible in the same manner provided in Section 82-54 of the Ordinance.

5. Interpretation of Financing. The City agrees that the use of low income housing tax credits constitutes financing of the loan by the Authority in fulfillment of the requirements of Section 82-50(3) of the Ordinance.

6. Contractual Effect of Ordinance. Notwithstanding the provisions of section 15(a)(5) of the Act to the contrary, a contract between the City and the Sponsor with the Authority as third party beneficiary under the contract, to provide tax exemption and accept payments in lieu of taxes, as previously described, is effectuated by enactment of this Ordinance

7. Payment of Service Charge. The annual service charge in lieu of taxes as determined under this Ordinance shall be payable in the same manner as general property taxes are payable to the City and distributed to the several units levying the general property tax in the same proportion as prevailed with the general property tax in the previous calendar year. The annual payment for each operating year shall be paid on or before April 1st of the following year. Collection procedures shall be in accordance with the provisions of the General Property Tax Act (1893 PA 206, as amended; MCL 211.1, *et seq*).

8. Limitation on the Payment of Annual Service Charge. Notwithstanding Section 3, the service charge to be paid each year in lieu of taxes for the part of the housing project that is tax exempt but which is occupied by other than ~~low~~ Low income ~~Income persons~~ Persons or ~~families~~ Families shall be equal to the full amount of the taxes which would be paid on that portion of the housing project if the housing project were not tax exempt.

9. Counterparts. This Agreement may be executed in several counterparts and an executed copy hereof may be relied upon as an original.

10. Binding and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns.

11. Effective Date. The effective date of this Agreement is the date that Developer or its assignee completes construction and receives a temporary or permanent certificate of occupancy from the City for the Property.

12. Severability. The various sections and provisions of this Agreement shall be deemed to be severable, and should any section or provision of this Agreement be declared by any court of competent jurisdiction to be unconstitutional or invalid the same shall not affect the validity of this Agreement as a whole or any section or provision of this Agreement, other than the section or provision so declared to be unconstitutional or invalid.

13. Inconsistent Ordinances. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Agreement are of no effect to the extent of such inconsistency or conflict.

14. Choice of Law; Venue. This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan. 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 venue.

IN WITNESS WHEREOF, the parties have signed this Agreement on the following page, on the dates indicated.

City of Muskegon

Dated: _____, 2019

By: _____
Stephen J. Gawron, Mayor

Dated: _____, 2019

By: _____
Ann Meisch, Clerk

**GENCAP 1021 JEFFERSON
LIMITED DIVIDEND HOUSING
ASSOCIATION LIMITED
PARTNERSHIP, LLC**

By: GenCap 1021 Jefferson MM,
LLC, a Wisconsin limited liability
company, its Sole Member

Dated: _____, 2019

By: General Capital Management,
Inc, a Wisconsin corporation, its
Manager

By: _____
David Weiss, CEO

Commission Meeting Date: August 27, 2019

Date: August 20, 2019
To: Honorable Mayor and City Commissioners
From: Finance
RE: Certification of MERS Representatives

SUMMARY OF REQUEST: The MERS plan document provides that “the governing body for each municipality shall certify the names of two (2) delegates to the Annual Meeting. One delegate shall be a member who is an officer of the municipality appointed by the governing body of the municipality. The other delegate shall be a member who is not an officer of the municipality, elected by the member officer/employees of the municipality.”

The City’s employee units previously agreed to a rotating system (based on date of joining MERS) to select one official employee representative. This year the official employee representative attending the MERS conference will be Steve Waltz from the Police Command Unit.

It is recommended that Kenneth Grant (Assistant Finance Director) be designated as the City’s employer delegate.

FINANCIAL IMPACT: Registration for the MERS conference in Traverse City, MI is \$175 per person. Additionally, mileage, hotel and related costs will be incurred.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Certification of Kenneth Grant and Steve Waltz to be the City’s officer and employee delegates at the MERS annual meeting in Grand Rapids on October 4 and 5, 2019.



Municipal Employees' Retirement System of Michigan
1134 Municipal Way • Lansing, MI 48917
800.767.MERS (6377) • Fax: 517.703.9707
www.mersofmich.com

2019 Officer and Employee Delegate Certification Form

MERS Annual Retirement Conference | October 3–4, 2019 | Grand Traverse Resort, Acme, MI

Please print clearly • Scan and attach this file when you register online • Retain a copy for your records

IMPORTANT: If you are not sending a delegate to Conference, please **DO NOT** submit this form. A **voting delegate** registered to attend the **MERS Retirement Conference** is **NOT** confirmed to have voting rights until this form has been uploaded with your online registration.

The voting delegate representative must be a MERS member, defined as an **active employee on payroll** who is enrolled in either a MERS Defined Benefit Plan, Defined Contribution Plan or Hybrid Plan.

1. Officer (and alternate) delegate information

The officer delegate (or alternate) shall be a MERS member who holds a department head position or above, exercises management responsibilities, and is directly responsible to the legislative, executive, or judicial branch of government.

Officer Delegate name

Officer Alternate name

Officer delegate and alternate listed above were appointed to serve at the 2019 MERS Annual Conference by official action of the governing body (or chief judge for a participating court) on _____, 2019.

2. Employee (and alternate) delegate information

The employee delegate (or alternate) shall be an employee member who is not responsible for management decisions, receives direction from management and, in general, is not directly responsible to the legislative, executive, or judicial branch of government.

Employee Delegate name

Employee Alternate name

Employee delegate and alternate listed above were elected to serve at the 2019 MERS Retirement Conference by secret ballot election conducted by an authorized officer on _____, 2019.

3. Certification

NOTE: Certification should be signed by a member of the governing body or chief administrative officer, or the chief judge for a participating court.

I certify that the officer delegate and alternate selections are true and correct, and the secret ballot election results for the employee delegate and alternate are true and correct.

Employer/municipality name*		Municipality number*	Email address	
Employer address	Employer city	Employer state	Employer zip code	
Signature of authorized authority*		Printed name		
Title of authorized authority*		Date		

* Required field

TIP: Scan and upload this completed form to your computer. Then attach it to your registration when you register online to attend the conference.
www.mersofmich.com

Date: 8/27/2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Transformer Replacement – Harvey Station

SUMMARY OF REQUEST:

Authorize staff to enter into an agreement with Newkirk Electric to replace 500 KVA transformer at Harvey Station since they submitted the lowest responsible bid of \$18,125.

Three (3) bids were submitted for this project.

Newkirk Electric	\$18,125.00
Wirtz Electric	\$19,950.00
Windemuller	\$23,520.00

FINANCIAL IMPACT:

\$18,125

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Newkirk Electric for a cost of \$18,125.



August 19, 2019

Mr. Josh Parmer
Muskegon Water Filtration
1900 Beach St.
Muskegon, MI 49441

RE: 1880-509 500kVA Transformer Replacement Project. - #1981-048

Dear Mr. Parmer:

Newkirk Electric appreciates the opportunity to provide you with a quotation for the above listed project. We have reviewed the scope and will supply the labor, material and equipment to perform the following.

Scope of Work:

- Provide and install a refurbished 500kVA 3 phase YY 12,470/7200V primary 480/277V secondary station type transformer at your Harvey St. station. 4-6 week lead time.

Clarifications:

- 1) Overtime is not included.
- 2) Electrical permit is not included.
- 3) A crane is included.
- 4) To reuse existing wire. Additional wire is not included.
- 5) No allowance has been added for existing needed electrical repairs not covered in the scope of work.
- 6) This quotation is valid for (30) days and will be subject to review after that time.
- 7) Newkirk Electric reserves the right to revise the quotation if new information becomes available.

Cost: \$18,125.00

Sincerely,

A handwritten signature in black ink, appearing to read "R.D.J.", with a long horizontal stroke extending to the right.

Rob DeJonge
Service Department Estimator
Newkirk Electric Associates, Inc.
radejonge@Newkirk-electric.com
231.724.4074 Direct
231.766.1941 Cell

A handwritten signature in black ink, appearing to read "Mike Donahue", with a stylized, cursive-like script.

Mike Donahue
Service Manager
Newkirk Electric Associates, Inc.
MPDonahue@Newkirk-electric.com
231.724.4074 Direct
231.798.5405 Cell



Servicing Industrial and Commercial businesses since 1983

DATE: 8/8/2019

Inquiry #: 7603G

Muskegon Water Filtration
1900 Beech Street
Muskegon, MI 49441

Re: **500KVA Pad Mounted Transformer
for Harvey Lift Station**

Attn: Josh Parmer

SCOPE OF WORK:

We are pleased to present the following proposal, as previously discussed, to provide one (1) 500 KVA 12470 Y/7200- 480Y /277 transformer for the harvey street lift station

Scope of Work:

1. Provide one (1) rewound 12470Y/7200 - 480Y/277 volt 500 KVA transformer
2. Transformer will consist of custom cabinets to fit current pipe & wire configurations
3. Non load Tap changer capable of +/- 2x2.5%
4. Mineral Oil coolant
5. Standard Secondary Bushings and spade connectors

FOR THE SUM OF..... \$19,950.00
Please note that this price is for straight time labor and a direct replacement
transformer any alterations to pipe or wire would be an additional charge

TERMS: DUE UPON RECEIPT

Contact person: Chris Gilbert

ACCEPTED BY: _____

Signature: *Chris Gilbert* _____

August 9, 2019

Josh Parmer
City of Muskegon
1900 Beach St
Muskegon MI 49441

Project: Harvey Transformer replacement
Project #TJV19-198

Dear Josh,

This proposal is for labor, material and equipment to complete the following:

- De-energize, disconnect and remove the existing 500 KVA substation transformer.
- Furnish and install 1- reconditioned 500 KVA substation transformer in the same location.
- Reconnect the existing primary, secondary, and ground connections.
- Re-energize and test transformer for proper voltage and rotation to complete.

Notes:

1. All associated work is based on normal working hours at non prevailing wages.
2. The new transformer will be installed in the same location as the old transformer, if any modifications are needed for any working clearance code requirements, additional costs will be required.

Total cost for the above described work is **\$23,520.00**. This proposal is valid for 30 days.

Thank you for the opportunity to provide a proposal for your requirements. If you have any questions, please feel free to contact us.

Sincerely,



Tim VanderPloeg
Outdoor Utilities Manager

Accepted by _____ Printed Name _____

Purchase Order _____ Date _____

AUTOMATION | COMMUNICATIONS & IT | ELECTRICAL | OUTDOOR UTILITIES | RENEWABLE

Date: 8/27/2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Relocating power pole to Harvey Station

SUMMARY OF REQUEST:

Authorize staff to enter into an agreement with Wirtz Electric to remove power pole from Filtration Plant and relocate to Harvey Station since they submitted the lowest responsible bid of \$11,450.

Two (2) bids were submitted for this project.

Newkirk Electric	\$12,430.00
Wirtz Electric	\$11,450.00

FINANCIAL IMPACT:

\$11,450

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Wirtz Electric for a cost of \$11,450.



June 11, 2019

Josh Parmer
City of Muskegon Water Filtration
1900 Beach St.
Muskegon, MI 49441

RE: Light Pole Replacement - #19-80058-2

Dear Mr. Parmer:

Newkirk Electric appreciates the opportunity to provide you with a quotation for the above listed project. We have reviewed the scope and will supply the labor, material and equipment to perform the following.

Scope of Work:

Option 1:

- Provide and install new pole.
- Pole has a 12-14 week lead time.
- Price is based on the location being accessible with the pole truck.

Option 2:

- Relocate Existing pole.

*****Because of the following variables/unknowns this number is estimated as a budgetary price how ever the price could greatly increase once the project is underway*****

- Below grade condition of the pole is unknown.
- Underground and overhead obstructions are unknown.
- Difficulty of pole removal because of ground conditions.

Clarifications:

- Overtime is not included
- Electrical permit is not included
- Site restoration is not included
- This proposal is valid for (30) days and will be subject to review after that time
- No allowance has been added for existing electrical repairs not covered in the scope of work
- Newkirk Electric reserves the right to revise this proposal if new information becomes available

Item	Cost
Option 1	\$21,865.00
Option 2	\$12,430.00

Sincerely,

A handwritten signature in black ink, appearing to read "R. DeJonge".

Rob DeJonge
Service Department Estimator
Newkirk Electric Associates, Inc.
radejonge@Newkirk-electric.com
231.724.4074 Direct
231.766.1941 Cell

A handwritten signature in black ink, appearing to read "Mike Donahue".

Mike Donahue
Service Manager
Newkirk Electric Associates, Inc.
MPDonahue@Newkirk-electric.com
231.724.4074 Direct
231.798.5405 Cell



Servicing Industrial and Commercial businesses since 1983

DATE: 8/5/2019

Inquiry #: 8183G

Muskegon Water Filtration
1900 Beech Street
Muskegon, MI 49441

Re: Removal of 90' pole currently used
for radio tower and relocate to the
Harvey Lift station

Attn: Josh Parmer

SCOPE OF WORK:

We are pleased to present the following proposal, as previously discussed, Labor & sub contractor to remove One (1) 90' power pole currently used as a radio tower located at you beach street location, And relocation to your harvey street lift station.

Scope of Work:

1. Provide labor to remove and relocate one (1) 90' power pole from Beach street to Harvey lift station

FOR THE SUM OF..... \$11,450.00

Please note that this price is for straight time labor to remove the pole and relocate and no other labor to remove devices or equipment. This is a Direct removal and relocation (reinstall)of the pole only, unless otherwise approved by all parties Prior to start of project.

TERMS: DUE UPON RECEIPT

Contact person: Chris Gilbert

ACCEPTED BY: _____

Signature: *Chris Gilbert* _____

Date: 8/27/2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: MTU PLC Programming Services

SUMMARY OF REQUEST:

Authorize staff to enter into a professional services agreement for MTU PLC Programming Services at Water Filtration Plant with Tetrtech per their proposal for \$16,000.

Tetra Tech is being recommended since they were the engineer for the control systems upgrades project and their familiarity with the filtration plant.

FINANCIAL IMPACT:

\$16,000

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Tetrtech for a cost of \$16,000.



TETRA TECH

August 15, 2019

Transmitted Electronically

Mr. Sanjeev Mungarwadi
Muskegon Water Filtration Plant Superintendent
1900 Beach Street
Muskegon, MI 49441

**Re: *Muskegon Water Filtration Plant
MTU PLC Programming Proposal***

Dear Mr. Mungarwadi:

Thank you for the opportunity to submit our professional services proposal to assist the City of Muskegon with upgrading the Water Filtration Plant (WFP) Master Telemetry Unit (MTU) programmable logic controller (PLC).

Tetra Tech has been involved with the City of Muskegon WFP control system since the early 1990's and continues to serve the City of Muskegon with control system design, implementation and programming tasks from a verity of our most experienced engineering staff, some who have been involved with engineering related tasks for the City for nearly 30 years.

Our service to the City of Muskegon includes design and implementation of the entire existing control system, including the remote pump stations & tanks as well as many upgrades at the WFP. Tetra Tech staff are always a phone call away and have assisted the WFP staff on many occasions, including outside of normal business hours.

Based on our discussions it our understanding that you would like to upgrade the WFP MTU PLC. We understand you have already purchased a Rockwell ControlLogix L71 PLC to replace the existing obsoleted PLC-5 type PLC.

The MTU PLC is a critical component of the WTP operation as its acts as a data hub or master controller responsible for controlling the sending and receiving of communication messages between the WFP and the majority of remote stations and elevated tanks.

Tetra Tech proposes to program the new Rockwell ControlLogix L71 PLC by migrating/converting the control logic from the existing PLC, testing the logic in our in-house software lab then performing onsite startup to fully debug the software and



make sure it's working and integrated with the existing PLC's and Wonderware HMI software. Tetra Tech assumes WFP staff will provide installation of the new PLC equipment.

SCOPE OF WORK

- Convert the existing WFP MTU PLC program to newer Rockwell Logix based program.
- Update the Wonderware tag-name database of the exiting WFP application to allow communication to the updated (new) PLC.
- Update the WFP Wonderware Historian tag-name database to communicate to the new ControlLogix MTU PLC.
- Commission new software and deploy updates to the existing terminal client computers.
- Tetra Tech will provide onsite assistance startup of the new MTU software and fully commission the new PLC and updated Wonderware software.

ASSUMPTIONS

Tetra Tech assumes the following:

- City will provide all project related computer hardware and software.
- City will provide all required labor to install the new MTU PLC and connect the PLC to the existing Ethernet network.

COMPENSATION

Compensation for the professional services for this project will be based on time and materials at a not to exceed fee of \$16,000.

If you concur with our proposal, please sign in the space provided below and return one original signed copy of this proposal to indicate your authorization to proceed. A return envelope is enclosed for your convenience. Our Standard Terms and Conditions are attached and considered a part of this proposal.

SCHEDULE

We are prepared to begin work immediately upon receipt of your written authorization to proceed. A preliminary schedule is presented below:

- | | |
|-------------------------------|-------------------------|
| • In-house System Programming | Sept/Oct 2019 (4 weeks) |
| • Onsite System Startup | Oct/Nov 2019 (1 weeks) |



TETRA TECH

CONCLUSION

We look forward to working with you on this important project. If you need additional information, please call me at (734) 213-5075.

Sincerely,

Mick S. Jones, P.E.
Senior Project Manager

Encl.: Standard Terms and Conditions

Copy: Accounting (w/encl.)

PROPOSAL ACCEPTED BY _____

TITLE _____ **DATE** _____

Muskegon Water Filtration Plant MTU PLC Programming Proposal



Tetra Tech of Michigan, PC

Engineering Services Standard Terms & Conditions

Services Consultant will perform services for the Project as set forth in Attachment A and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

Compensation In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

Fee Definitions The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

Payment Terms Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

Additional Services The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

Site Access The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

Underground Facilities Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

Regulated Wastes Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

Contractor Selection Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

Ownership of Documents Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

Standard of Care Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

Period of Service This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule in Attachment A. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

Insurance and Liability Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute

Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate

Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage

Professional Liability (E&O) - \$1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

Indemnification Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

Dispute Resolution The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

Suspension of Work The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices, together with all costs arising out of such termination, within fourteen (14) days. The Client may withhold an amount for services that may be in dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

Authorized Representative The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

Project Requirements The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Independent Consultant Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

Compliance with Laws Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Permits and Approvals Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

Limitation of Liability In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed \$50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

Consequential Damages Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants 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 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 Client and Consultant 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 or with this Agreement.

Waiver of Subrogation Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

Environmental Matters The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

Cost Opinions Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

Contingency Fund The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

Safety Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

Information from Other Parties The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

Force Majeure Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

Warranty Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

Severability Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Survival All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

Assignments Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

Governing Law The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Collection Costs In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

Equal Employment Opportunity Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

Attorney Fees Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

Third Party Beneficiaries Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

Lien Rights Consultant may file a lien against the Client's property in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by Consultant are considered property improvements and the Client waives the right to any legal defense to the contrary.

Captions The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

Date: 8/27/2019

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Fleet Vehicle Replacement

SUMMARY OF REQUEST:

The Equipment Division is requesting permission to purchase one (1) Chevy Traverse coming from Berger Chevrolet off the Oakland County Contract, the lowest available price. The price of this vehicle is \$30,396.00 coming from the Equipment Division Budget.

FINANCIAL IMPACT:

\$30,396.00

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Chevy Traverse from Berger Chevrolet.



Date: 8/27/2019

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Fleet Vehicle Replacement

SUMMARY OF REQUEST:

The Equipment Division is requesting permission to purchase one (1) Chevy Impala coming from Berger Chevrolet off the Oakland County Contract, the lowest available price. The price of this vehicle is \$22,843.00 coming from the Equipment Division Budget.

FINANCIAL IMPACT:

\$22,843.00

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Chevy Impala from Berger Chevrolet.



AGENDA ITEM NO. _____

CITY COMMISSION MEETING ____

TO: Honorable Mayor and City Commission

FROM: Finance

DATE: August 19, 2019

SUBJECT: Notice of Intent to Bond Resolution for Scattered Housing Development

SUMMARY OF REQUEST: The Notice of Intent is the first step in the bonding process. This resolution authorizes the publication of the Notice of Intent to bond for the purpose of acquisition and construction of residential housing units in the City for economic development purposes. The total project shall not exceed \$3,000,000.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the Resolution of Intent.

NOTICE OF INTENT RESOLUTION

CITY OF MUSKEGON County of Muskegon, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, held on the 27th day of August, 2019, at 5:30 o'clock p.m. prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

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

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), intends to borrow money to pay all or part of the cost to acquire and construct residential housing units in the City for economic development purposes (the "Project"); and

WHEREAS, the City desires to authorize the issuance and sale of its general obligation limited tax bonds pursuant to Act 34, Public Acts of Michigan, 2001, as amended ("Act 34") as the most efficient method of financing the Project; and

WHEREAS, the total amount of bonds to be issued to finance the acquisition and construction of the Project shall not exceed Three Million Dollars (\$3,000,000); and

WHEREAS, a notice of intent to issue bonds must be published before the issuance of the aforesaid bonds in order to comply with the requirements of Section 517 of Act 34.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Clerk is hereby authorized and directed to publish a notice of intent to issue the Bonds in the *Muskegon Chronicle*, a newspaper of general circulation in the City.
2. The notice of intent shall be published as a **display advertisement not less than one-quarter (1/4) page in size** in substantially the form attached to this Resolution as Exhibit A.
3. The City Commission does hereby determine that the foregoing form of Notice of Intent to Issue Bonds, and the manner of publication directed, is adequate notice to the taxpayers and electors of the City, and is the method best calculated to give them notice of the City's intent to issue the Bonds, the purpose of the Bonds, the security for the Bonds, and the right of

referendum of the electors with respect thereto, and that the provision of forty-five (45) days within which to file a referendum petition is adequate to insure that the City’s electors may exercise their legal rights of referendum, and the newspaper named for publication is hereby determined to reach the largest number of persons to whom the notice is directed.

4. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution are hereby rescinded.

AYES: Members _____

NAYS: Members _____

RESOLUTION DECLARED ADOPTED.

Ann Marie Meisch
City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on August 27, 2019, and that the meeting was conducted and public notice of the meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of the meeting were kept and will be or have been made available as required by the Open Meetings Act.

Ann Marie Meisch
City Clerk

EXHIBIT A

NOTICE TO ELECTORS OF THE CITY OF MUSKEGON OF INTENT TO ISSUE BONDS SECURED BY THE TAXING POWER OF THE CITY AND OF RIGHT OF REFERENDUM THEREON

PLEASE TAKE NOTICE that the City Commission of the City of Muskegon, County of Muskegon, intends to authorize the issuance and sale of general obligation capital improvement bonds pursuant to Act 34, Public Acts of Michigan, 2001, as amended, in one or more series in a total principal amount of not to exceed Three Million Dollars (\$3,000,000), for the purpose of paying all or part of the cost to acquire and construct residential housing units in the City for economic development purposes.

BOND DETAILS

The bonds will mature in not to exceed ten (10) years, with interest rates to be determined at a public or negotiated sale but in no event to exceed the maximum permitted by law on the unpaid balance from time to time remaining outstanding on said bonds.

SOURCE OF PAYMENT OF BONDS

THE PRINCIPAL OF AND INTEREST ON SAID BONDS shall be payable from the general funds of the City lawfully available for such purposes including property taxes levied within applicable constitutional, statutory and charter tax rate limitations.

RIGHT OF REFERENDUM

THE BONDS WILL BE ISSUED WITHOUT A VOTE OF THE ELECTORS UNLESS A PETITION REQUESTING SUCH A VOTE SIGNED BY NOT LESS THAN 10% OF THE REGISTERED ELECTORS OF THE CITY IS FILED WITH THE CITY CLERK WITHIN FORTY-FIVE (45) DAYS AFTER PUBLICATION OF THIS NOTICE. IF SUCH PETITION IS FILED, THE BONDS MAY NOT BE ISSUED WITHOUT AN APPROVING VOTE OF A MAJORITY OF THE QUALIFIED ELECTORS OF THE CITY VOTING THEREON.

THIS NOTICE is given pursuant to the requirements of Section 517, Act 34, Public Acts of Michigan, 2001, as amended.

Ann Marie Meisch
Clerk, City of Muskegon

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Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing - Request to Establish an Obsolete Property District
– 1208 8th St

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Core Development Corp, LLC has requested the establishment of an Obsolete Property District for their property at 1208 8th St. The establishment of the Obsolete Property District would allow them to apply for an Obsolete Property Rehabilitation Exemption Certificate.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the creation of the district.

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. _____

A resolution establishing an Obsolete Property Rehabilitation District.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

- A. The City of Muskegon has been designated as a qualified local government unit for the purpose of establishing Obsolete Property Rehabilitation Districts and approving Applications for Obsolete Property Rehabilitation Exemption Certificates.
- B. The area located in the land described in this resolution is known to the City Commission and is clearly characterized by the presence of obsolete commercial property, and the land and improvements are obsolete commercial property.
- C. Notice has been given by certified mail to the owners of all real property within the proposed Obsolete Property Rehabilitation District and a hearing has been held offering an opportunity to all owners and any other resident or taxpayer of the City to appear and be heard. Said notice was given at least ten (10) days before the hearing.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

- 1. That the property described in this resolution and proposed as an Obsolete Property Rehabilitation District is characterized by obsolete commercial property.
- 2. That the obsolete commercial property, the subject of this resolution, as is described in Attachment A.
- 3. That the City Commission hereby establishes an Obsolete Property Rehabilitation District on the lands and parcels set forth in the attached description.

This resolution passed.

Ayes _____

Nays _____

CITY OF MUSKEGON

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on August 27, 2019. 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

By _____
Ann Meisch, City Clerk

ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 7 & 8 BLK 317 EXC A STRIP OF LAND 8 FT
SIDE ACROSS THE SELY END OF LOT 8 FOR USE AS AN ALLEY SUBJ TO CROSS PARKING
& REFUSE ESMT RECORD'D L/P 3642/568

Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing - Request to issue an Obsolete Property
Certificate –Core Development Corp, LLC

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Core Development Corp, LLC has requested the issuance of an Obsolete Property Certificate for their property located at 1208 8th St. Total capital investment for this project is estimated to be \$550,000, which qualifies them for the full 12-year abatement.

FINANCIAL IMPACT:

If an Obsolete Property Certificate is issued, the property taxes would be frozen at the pre-rehabilitated rate for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the Obsolete Property Rehabilitation Exemption Certificate

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO.

A resolution approving the application for an Obsolete Property Rehabilitation Exemption Certificate by Core Development Corp, LLC.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

- A. The City Commission has received an Application for an Obsolete Property Rehabilitation Exemption Certificate from Core Development Corp, LLC, to apply to the improvements located in an Obsolete Property Rehabilitation District established by previous resolution. All items described under "Instructions" (a) through (f) of the application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the City of Muskegon, the Qualified Local Government Unit, by the applicant.
- B. The City of Muskegon is a qualified local governmental unit as determined by STC Bulletin No. 9 of 2000, dated July 12, 2000.
- C. An Obsolete Property Rehabilitation District in which the application property is located was established after a hearing on August 27, 2019.
- D. The taxable value of the property proposed to be exempt, plus the aggregate taxable value of properties already exempted under PA 146 of 2000 and under PA 198 of 1974, does not exceed five percent (5%) of the total taxable value of the City of Muskegon.
- E. In the event it is determined that the said taxable values do exceed five percent (5%), the City Commission determines further that the said exceedance will not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of any affected taxing units.
- F. This resolution of approval is considered by the City Commission on August 27, 2019, after a public hearing as provided in Section 4(2) of PA 146 of 2000. The hearing was held on this date.
- G. The applicant, Core Development Corp, LLC is not delinquent any taxes related to the facility.
- H. The exemption to be granted by this resolution is for twelve (12) years and no extensions will be granted.
- I. The City Commission finds that the property for which the Obsolete Property Rehabilitation Exemption Certificate is sought is obsolete property within the meaning of Section 2(h) of Public Act 146 of 2000 in that the property, which is commercial, is functionally obsolete. The City has received from the applicant all the items required by Section 9 of the application form, being the general description of the obsolete facility, a general description of the proposed use, a description of the general nature and extent of the rehabilitation to be undertaken, a descriptive list of fixed building equipment that will be part of the rehabilitated facility, a time schedule for undertaking and complete the rehabilitation, and statement of the economic advantages expected from the exemption.
- J. Commencement of the rehabilitation has not occurred before the establishment of the district.

- K. The application relates to a rehabilitation program that when completed will constitute a rehabilitated within the meaning of PA 146 of 2000 and will be situated within the Obsolete Property Rehabilitation District established by the City under PA 146 of 2000.
- L. Completion of the rehabilitated facility is calculated to and will, at the time of the issuance of the Certificate, have the reasonable likelihood to increase commercial activity and create employment; it will revitalize an urban area. The rehabilitation will include improvements aggregating more than ten percent (10%) of the true cash value of the property at the commencement of the rehabilitation.
- M. The City Commission determines that the applicant shall have twenty-four (24) months to complete the rehabilitation. It shall be completed by August 27, 2021, or two years after the Certificate is issued, whichever occurs later.
- N. That notice pursuant to statute has been timely given to the applicant, the assessor for the City of Muskegon, representatives of the affected taxing units and the general public.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. Based upon the statements set forth in, and incorporating the recitals to this resolution, the City Commission hereby approves the application filed by Core Development Corp, LLC for an Obsolete Property Rehabilitation Exemption Certificate, to be effective for a period of twelve (12) years and no extensions will be granted;
2. BE IT FURTHER RESOLVED, that this resolution of approval relates to the property set forth in Attachment A, the legal description containing the facilities to be improved;
3. BE IT FURTHER RESOLVED, that, as further condition of this approval, the applicant shall comply with the representations and conditions set forth in the recitals above and in the application material submitted to the City.

This resolution passed.

Ayes: _____

Nays: _____

CITY OF MUSKEGON

BY: _____

Stephen J. Gawron
Mayor

ATTEST: _____

Ann Meisch
Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission held on August 27, 2019. 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

By _____
Ann Meisch, City Clerk

ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 7 & 8 BLK 317 EXC A STRIP OF LAND 8 FT
SIDE ACROSS THE SELY END OF LOT 8 FOR USE AS AN ALLEY SUBJ TO CROSS PARKING &
REFUSE ESMT RECORD'D L/P 3642/568

Date: August 7, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Designation of Voting Delegates for the Michigan
Municipal League Annual Business Meeting

SUMMARY OF REQUEST: 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.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

July 10, 2019

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 Detroit, September 25-27, 2019. The League's "Annual Meeting" is scheduled for 4:15 pm on Wednesday, September 25 in Room 320 at the Cobo Center. The meeting will be held for the following purposes:

1. Election of Trustees. To elect six members of the Board of Trustees for terms of three years each (see #1 on page 2).
2. 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, please call Monica Drukis 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 #2 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 August 21, 2019.

3. 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 August 21, 2019.

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. Election of Trustees

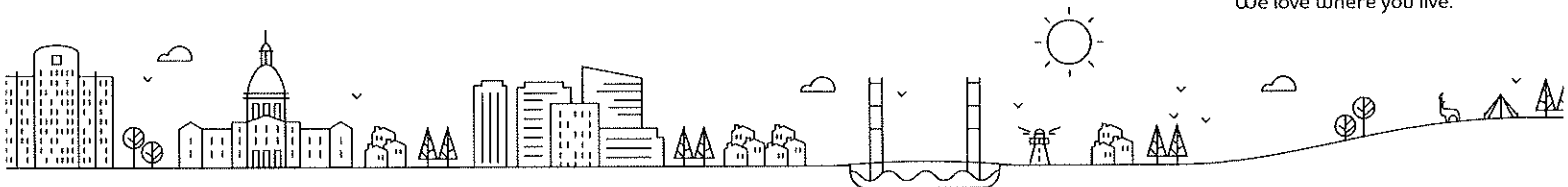
Regarding election of Trustees, under Section 5.3 of the League Bylaws, six members of the Board of Trustees will be elected at the annual meeting for a term of three years. The regulations of the Board of Trustees require the Nominations Committee to complete its recommendations and post the names of the nominees for the Board of Trustees on a board at the registration desk at least four hours before the hour of the business meeting.

2. 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 **August 21, 2019**. 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.”

We love where you live.

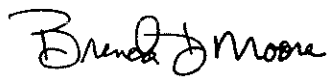


3. Posting of Proposed Resolutions and Core Legislative Principles

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 Tuesday, September 24 at Cobo Center for the purpose of considering such other matters as may be requested by the membership, in addition to other agenda items.

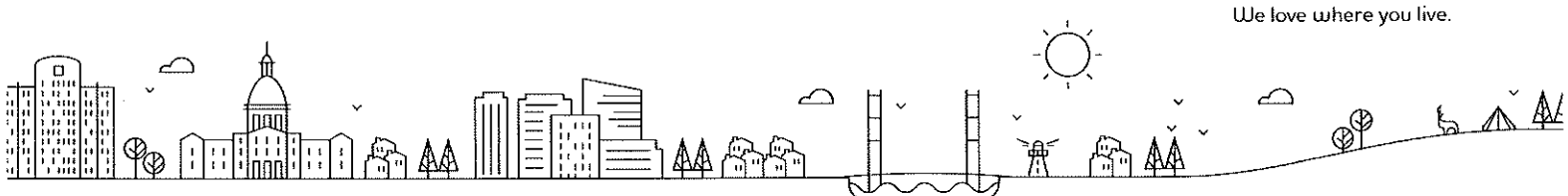
Sincerely,



Brenda F. Moore
President
Mayor Pro Tem, City of Saginaw



Daniel P. Gilmartin
Executive Director & CEO



Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Request to Create a new Neighborhood Enterprise Zone district
at 292 W Western Ave

SUMMARY OF REQUEST:

Pursuant to Public Act 147 of the Michigan Public Acts of 1992, Sweetwater Development, LLC has requested to create a new Neighborhood Enterprise Zone (NEZ) district for the parcel at 292 W Western Ave. Properties located in this NEZ district will be eligible to apply for NEZ certificates, which will lower the residential property taxes on new construction. Notice letters were sent to the taxing jurisdictions on June 11, 2019 and a public hearing was held on June 25, 2019. State law requires that the resolution must be adopted at least 60 days after the notice letters were sent.

FINANCIAL IMPACT:

No financial impact at this point. However, being in a district will allow them to apply for a rehab NEZ certificate, which will lower the residential property taxes for 1 to 15 years.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the new NEZ district.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO CREATE A NEW NEIGHBORHOOD ENTERPRIZE ZONE
DISTRICT WITHIN THE CITY OF MUSKEGON**

WHEREAS, the City of Muskegon currently has established Neighborhood Enterprise Zone districts within the City, and;

WHEREAS, the City of Muskegon would like to create a new Neighborhood Enterprise Zone district to a new location within the City, and;

WHEREAS, notices were sent to the local taxing jurisdictions on June 11, 2019, and;

WHEREAS, a public hearing was held regarding the creation of this new district on June 25, 2019; and

WHEREAS, the new district boundaries will include the property known as “The Leonard (292 W Western Ave, property #24-233-000-0024-00),” as shown in Attachment A, and;

WHEREAS, the total square footage of Neighborhood Enterprise Zone districts in Muskegon will not exceed 15% of the total square footage of the City;

NOW, THEREFORE, BE IT RESOLVED that the new Neighborhood Enterprise Zone district in the City of Muskegon have been approved.

Adopted this 27th day of August, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on August 27, 2019.

By: _____
Ann Meisch
City Clerk

A map of a city block with lots numbered in red. Lot 292 is highlighted with a thick red border. The map shows streets labeled 'MORRIS' and '2ND', and 'WESTERN'. Lot numbers include 372, 365, 363, 387, 401, 350, 356, 360, 380, 351, 351, 333, 325, 307, 299, 296, 288, 284, 280, 295, 932, 934, 930, 932, 934, 200.

Commission Meeting Date: August 27, 2019

Date: August 21, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Approval of a Neighborhood Enterprise Zone Certificate – 292 W Western

SUMMARY OF REQUEST:

An application for a Neighborhood Enterprise Zone Certificate has been received from Sweetwater Development, LLC for the construction of 18 market-rate apartments as part of a mixed-use development project. The estimated project cost is \$222,975 per unit. The applicant has met local and state requirements for the issuance of the NEZ certificate. They have requested the maximum 15 years for the exemption.

FINANCIAL IMPACT:

One-half of the previous year's state average principal residence millage rate will be applied to the value of the facility for a duration of 15 years, with a three-year phase out (they will receive 75% of the abatement in year 13, 50% in year 15 and 25% in year 15).

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the NEZ certificate for 15 years.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION TO APPROVE THE ISSUANCE
OF A NEIGHBORHOOD ENTERPRISE ZONE CERTIFICATE**

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate for a new facility has been filed with the City Clerk by Sweetwater Development, LLC to construct new market-rate residential apartments at 292 W Western Ave in “The Leonard” Neighborhood Enterprise Zone District, and;

WHEREAS, the Neighborhood Enterprise Zone Certificate will only be applied to the 18 market-rate apartment units in the mixed-use development, and;

WHEREAS, the applicant has satisfied both the local and state eligibility criteria for a Neighborhood Enterprise Zone Certificate;

WHEREAS, the Neighborhood Enterprise Zone Certificate has been approved for fifteen (15) years and no extensions will be granted;

NOW, THEREFORE, BE IT RESOLVED that the application for a Neighborhood Enterprise Zone Certificate for a new facility for the market-rate apartments at 292 W Western Ave by Sweetwater Development, LLC be approved.

Adopted this 27th day of August, 2019.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on August 27, 2019.

By: _____
Ann Meisch
City Clerk

AGENDA ITEM NO. _____

CITY COMMISSION MEETING ____

TO: Honorable Mayor and City Commission
FROM: Finance
DATE: August 19, 2019
SUBJECT: Updates to MERS Defined Benefit Plan Adoption Agreements

SUMMARY OF REQUEST: After an audit conducted by MERS of our payroll system, it was discovered that we need to update our agreements for changes made per union agreements, compensation included in MERS wages and hours included in calculating Final Average Compensation that weren't included in current agreements.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the updates to our MERS Defined Benefit Agreements.

Detail for Updates to Defined Benefit Agreements with MERS

- 1) Division 50 Fire – updates to include sick leave payouts and payment in lieu of health insurance in computing MERS wages. This also updates the maximum hours of leave includible in the Final Average Compensation for 40 hour a week employees at 240 hours and for 54 hour week employees at 324. All of these update should have come over when this division moved to MERS in April 2007.
- 2) Division 21 – Police Patrol – updates to include sick leave payouts and payment in lieu of health insurance in computing MERS wages. This also updates the maximum hours of leave includible in the Final Average Compensation at 240 hours. All of these updates should have come over when this division moved to MERS in July 2007.
- 3) Division 22 - Police Command – update to exclude overtime pay from computing MERS wages. This update was effective 3/1/2013.
- 4) Division 1 Nonunion – update to include sick leave payout and payment in lieu of health insurance in computing MERS wages. This update should have come over when this division moved to MERS in January 2006.
- 5) Division 11 Clerical – update to include sick leave payout and payment in lieu of health insurance in computing MERS wages. This update should have come over when this division moved to MERS in October 2006.
- 6) Division 12 – DPW SEIU – update to include sick leave payout and payment in lieu of health insurance in computing MERS wages. This update should have come over when this division moved to MERS in April 2007.
- 7) Division 22 Police Command – update to include leave payout and payment in lieu of health insurance in computing MERS wages. This update should have come over when this division moved to MERS in July 2006.

Defined Benefit Plan Adoption Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 50), the **effective date shall be the first day of** 4/1, 2007. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20__.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20__.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: _____, 20____

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the

_____ on _____.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____
(Name)
_____ waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.

Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.

2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

☐ Termination Final Average Compensation (calculated over the members entire wage history)

☐ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years

4. Vesting (5 -10 yrs, increments of 1 yr) _____ years

5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. Required employee contribution (Max 10%, increments of 0.01%) _____ %

7. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

Employers shall define compensation using the following options (choose one):

- ☒ Compensation including all items as allowed in the MERS Plan Document (Section 14).

If anything varies, specify here:

Included: Sick leave payouts, Payments in Lieu of Hlth Ins., Max 240 hr or 324 hr leave incl. in FAC*

Excluded: _____

*Max 240 hr for
40 hrs employees,
Max 324 hrs for
54 hrs employees.

- ☐ Base wages only.

If any items should be included, specify here:

Included: _____

- ☐ Medicare taxable wages as reported on W2.

- ☐ Wages plus amounts otherwise not reported as gross compensation, such as elected amounts for Section 125(a) or 457(b) deferrals.

Defined Benefit Plan Adoption Agreement

8. Unreduced Early Retirement/Service Requirements:

☐ Age 50 – 54_____ Service of either ☐ 25 or ☐ 30 years
☐ Age 55 – 65_____ Service between 15 and 30 years _____
☐ Service only (must be any number from 20 – 30 years accrued service): _____
☐ Age + Service Points (total must be from 70 – 90): _____ points

9. Other

- ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- ☐ Deferred Retirement Option Program (DROP)
- ☐ Annuity Withdrawal Program (AWP)
- Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
- ☐ Interest rate for employee contributions as determined by the Retirement Board, or
- ☐ MERS' assumed rate of return as of the date of the distribution.

10. Cost-of-Living Adjustment

☐ All current retirees as of effective date	☐ Future retirees who retire after effective date
☐ Retirees who retire between _____/01/_____ and _____/01/_____	
Increase of _____% or \$_____ per month	Increase of _____% or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

- ☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

Defined Benefit Plan Adoption Agreement

11. Service Credit Purchase Estimates are:

- ☐ Not permitted
- ☐ Permitted

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Benefit Plan Adoption Agreement, the provisions of the Plan Document control.

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

Defined Benefit Plan Adoption Agreement



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www.mersofmich.com

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I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20____.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 21), the effective date shall be the first day of 7/1, 2007. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.

Defined Benefit Plan Adoption Agreement

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(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: _____, 20____

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the

_____ on _____
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____
(Name)

_____ waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

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2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

☐ Termination Final Average Compensation (calculated over the members entire wage history)

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3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years

4. Vesting (5 -10 yrs, increments of 1 yr) _____ years

5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. Required employee contribution (Max 10%, increments of 0.01%) _____ %

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- ☒ Compensation including all items as allowed in the MERS Plan Document (Section 14).

If anything varies, specify here:

Included: Sick leave payouts, 240 hrs Max Leave includible in FAC, Payments in Lieu of Health Insurance

Excluded: _____

- ☐ Base wages only.

If any items should be included, specify here:

Included: _____

- ☐ Medicare taxable wages as reported on W2.

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Defined Benefit Plan Adoption Agreement

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☐ Age 50 – 54_____ Service of either ☐ 25 or ☐ 30 years
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☐ Service only (must be any number from 20 – 30 years accrued service): _____
☐ Age + Service Points (total must be from 70 – 90): _____ points

9. Other

- ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- ☐ Deferred Retirement Option Program (DROP)
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- Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
- ☐ Interest rate for employee contributions as determined by the Retirement Board, or
- ☐ MERS' assumed rate of return as of the date of the distribution.

10. Cost-of-Living Adjustment

☐ All current retirees as of effective date	☐ Future retirees who retire after effective date
☐ Retirees who retire between _____/01/____ and _____/01/____	
Increase of _____% or \$_____ per month	Increase of _____% or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

- ☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

Defined Benefit Plan Adoption Agreement

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- ☐ Not permitted
- ☐ Permitted

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2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
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5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

VIII. Execution

The foregoing Adoption Agreement is hereby approved by Muskegon City Council on
the day of , 20 .
(Name of Approving Employer)

Authorized signature: _____

Title: _____

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

Defined Benefit Plan Adoption Agreement



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I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

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A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

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- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 22), the **effective date shall be the first day of** 3/1, 20 13. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20__.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20__.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

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(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

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IV. Provisions

Valuation Date: _____, 20____

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It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the

_____ on _____.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____
(Name)

_____ waive the right for a presentation of the results.
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2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

☐ Termination Final Average Compensation (calculated over the members entire wage history)

☐ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years

4. Vesting (5 -10 yrs, increments of 1 yr) _____ years

5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. Required employee contribution (Max 10%, increments of 0.01%) _____ %

7. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

Employers shall define compensation using the following options (choose one):

- ☒ Compensation including all items as allowed in the MERS Plan Document (Section 14).

If anything varies, specify here:

Included: ~~Sick leave payouts, Payments in Lieu of Health Insurance~~

Excluded: Overtime pay

- ☐ Base wages only.

If any items should be included, specify here:

Included: _____

- ☐ Medicare taxable wages as reported on W2.

- ☐ Wages plus amounts otherwise not reported as gross compensation, such as elected amounts for Section 125(a) or 457(b) deferrals.

Defined Benefit Plan Adoption Agreement

8. Unreduced Early Retirement/Service Requirements:

☐ Age 50 – 54_____ Service of either ☐ 25 or ☐ 30 years
☐ Age 55 – 65_____ Service between 15 and 30 years _____
☐ Service only (must be any number from 20 – 30 years accrued service): _____
☐ Age + Service Points (total must be from 70 – 90): _____ points

9. Other

- ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- ☐ Deferred Retirement Option Program (DROP)
- ☐ Annuity Withdrawal Program (AWP)
- Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
- ☐ Interest rate for employee contributions as determined by the Retirement Board, or
- ☐ MERS' assumed rate of return as of the date of the distribution.

10. Cost-of-Living Adjustment

☐ All current retirees as of effective date	☐ Future retirees who retire after effective date
☐ Retirees who retire between _____/01/____ and _____/01/____	
Increase of _____% or \$_____ per month	Increase of _____% or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

- ☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

Defined Benefit Plan Adoption Agreement

11. Service Credit Purchase Estimates are:

- ☐ Not permitted
- ☐ Permitted

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Benefit Plan Adoption Agreement, the provisions of the Plan Document control.

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

Defined Benefit Plan Adoption Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (**Defined Benefit division number** 1), the **effective date shall be the first day of** 1/1, 2006. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20__.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20__.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: _____, 20____

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the

_____ on _____.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____ (Name)
_____ waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.

Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.

2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

- ☐ Termination Final Average Compensation (calculated over the members entire wage history)
- ☐ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years

4. Vesting (5 -10 yrs, increments of 1 yr) _____ years

5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).

6. Required employee contribution (Max 10%, increments of 0.01%) _____ %

7. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

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- ☒ Compensation including all items as allowed in the MERS Plan Document (Section 14).

If anything varies, specify here:

Included: Sick leave payouts, Payments in Lieu of Health Insurance

Excluded: _____

- ☐ Base wages only.

If any items should be included, specify here:

Included: _____

- ☐ Medicare taxable wages as reported on W2.

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Defined Benefit Plan Adoption Agreement

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☐ Age 50 – 54 _____ Service of either ☐ 25 or ☐ 30 years
☐ Age 55 – 65 _____ Service between 15 and 30 years _____
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9. Other

- ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
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10. Cost-of-Living Adjustment

☐ All current retirees as of effective date ☐ Retirees who retire between _____/01/____ and _____/01/____	☐ Future retirees who retire after effective date
Increase of _____% or \$_____ per month	Increase of _____% or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

- ☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

Defined Benefit Plan Adoption Agreement

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- ☐ Not permitted
- ☐ Permitted

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VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
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6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

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Defined Benefit Plan Adoption Agreement



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I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20____.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

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- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 11), the effective date shall be the first day of 10/1, 2006. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

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(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

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☐ Our MERS representative presented and explained the valuation results to the

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(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____
(Name)

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Excluded: _____

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Defined Benefit Plan Adoption Agreement

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- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- ☐ Deferred Retirement Option Program (DROP)
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10. Cost-of-Living Adjustment

☐ All current retirees as of effective date	☐ Future retirees who retire after effective date
☐ Retirees who retire between _____/01/____ and _____/01/____	
Increase of _____% or \$_____ per month	Increase of _____% or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

- ☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

Defined Benefit Plan Adoption Agreement

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- ☐ Not permitted
- ☐ Permitted

V. Appointing MERS as the Plan Administrator

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2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

VIII. Execution

The foregoing Adoption Agreement is hereby approved by Muskegon City Council on
the day of , 20 .
(Name of Approving Employer)

Title: _____

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

Defined Benefit Plan Adoption Agreement



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I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20____.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 12), the effective date shall be the first day of 4/1, 2007. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: _____, 20____

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. Please choose one:

☐ Our MERS representative presented and explained the valuation results to the

_____ on _____.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____
(Name)
_____ waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.

Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.

2. Benefit Multiplier (1%-2.5%, increments of 0.05%) _____ % (max 80% for multipliers over 2.25%)

☐ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

- ☐ Termination Final Average Compensation (calculated over the members entire wage history)
- ☐ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

3. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years
4. Vesting (5 -10 yrs, increments of 1 yr) _____ years
5. Normal Retirement Age will be the later of: _____ (any age from 60-70), or the vesting provision selected above (#4).
6. Required employee contribution (Max 10%, increments of 0.01%) _____ %
7. Compensation for the Defined Benefit Plan means the salary or wages paid to an employee for personal services rendered while a member of MERS. Compensation and any applicable employee contributions must be reported to MERS on a monthly basis.

Employers shall define compensation using the following options (choose one):

- ☒ Compensation including all items as allowed in the MERS Plan Document (Section 14).

If anything varies, specify here:

Included: Sick leave payouts, Payments in Lieu of Health Insurance

Excluded: _____

- ☐ Base wages only.

If any items should be included, specify here:

Included: _____

- ☐ Medicare taxable wages as reported on W2.
- ☐ Wages plus amounts otherwise not reported as gross compensation, such as elected amounts for Section 125(a) or 457(b) deferrals.

Defined Benefit Plan Adoption Agreement

8. Unreduced Early Retirement/Service Requirements:

☐ Age 50 – 54 _____ Service of either ☐ 25 or ☐ 30 years
☐ Age 55 – 65 _____ Service between 15 and 30 years _____
☐ Service only (must be any number from 20 – 30 years accrued service): _____
☐ Age + Service Points (total must be from 70 – 90): _____ points

9. Other

- ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the employee's benefit
- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- ☐ Deferred Retirement Option Program (DROP)
- ☐ Annuity Withdrawal Program (AWP)
Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
- ☐ Interest rate for employee contributions as determined by the Retirement Board, or
- ☐ MERS' assumed rate of return as of the date of the distribution.

10. Cost-of-Living Adjustment

☐ All current retirees as of effective date	☐ Future retirees who retire after effective date
☐ Retirees who retire between _____/01/____ and _____/01/____	
Increase of _____% or \$_____ per month	Increase of _____% or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired _____ months (6-12 months, increments of 1 month)	Employees must be retired _____ months (6-12 months, increments of 1 month)

- ☐ Check here if the existing COLA will be bridged for active participants as of the effective date selected on this form. Benefits accrued for service after the effective date will have no COLA increase applied.

Defined Benefit Plan Adoption Agreement

11. Service Credit Purchase Estimates are:

- ☐ Not permitted
- ☐ Permitted

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event of any conflict between the MERS Plan Document and the MERS Defined Benefit Plan Adoption Agreement, the provisions of the Plan Document control.

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

VIII. Execution

The foregoing Adoption Agreement is hereby approved by Muskegon City Council on
the _____ day of _____, 20_____.
(Name of Approving Employer)

Title: _____

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

Defined Benefit Plan Adoption Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20__.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible employee shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 22), the effective date shall be the first day of 7/1, 2006. Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20__.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20__.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

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Increase of _____ % or \$_____ per month	Increase of _____ % or \$_____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
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VIII. Execution

The foregoing Adoption Agreement is hereby approved by Muskegon City Council on
the day of , 20 .
(Name of Approving Employer)

Title: _____

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)

Date: August 21, 2019
To: City Commissioners
From: Office of the Mayor
RE: Revised City Commission Rules and Procedures

SUMMARY OF REQUEST: To adopt revisions to the City Commission Rules and Procedures discussed at the Legislative Policy Committee meeting held July 31, 2019.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

RECOMMENDATION: To adopt the revised City Commission Rules and Procedures as discussed.

CONTENTS

RULES OF THE CITY COMMISSION

- A. Regular & Special Meetings
- B. Meeting Procedures
- C. Closed Meetings
- D. Voting & Discussion
- E. Citizen Participation
- F. Agenda
- G. Consent Agenda
- H. Recording of Meeting
- I. Miscellaneous
- J. Committee Assignments
- K. Manager Evaluation Process

GUIDELINES FOR CONDUCT

- A. Public Relations
- B. City Commission Relations with City Staff
- C. City Commission Relations with Appointed City Commissions and Committees and Commission Member Representation to other Agencies and Groups

RESOLUTION

A RESOLUTION OF THE CITY OF MUSKEGON ADOPTING RULES OF THE CITY COMMISSION FOR THE CONDUCT OF COMMISSION MEETINGS AND A CODE OF CONDUCT.

BE IT RESOLVED by the City Commission of the City of Muskegon that said Commission does hereby adopt certain rules of procedures and conduct as follows:

RULES OF THE CITY COMMISSION

A. REGULAR AND SPECIAL MEETINGS:

1. REGULAR MEETINGS

Regular meetings of the City Commission will be held on the second and fourth Tuesday of each month beginning at 5:30 p.m., local prevailing time, at the City Hall, 933 Terrace Street, Muskegon. Regular meetings may be rescheduled to other times by a vote of the Commission.

2. SPECIAL MEETINGS

A special meeting may be called by the Mayor or any of two (2) or more members of Commission and upon at least eighteen (18) hours notice to each member.

3. BUSINESS AT SPECIAL MEETINGS

No business shall be transacted at any special meeting of the Commission unless the same has been stated in the required notice of such meeting.

4. STUDY SESSION MEETINGS

The Study Work Session meetings will be held on the Monday preceding the second Tuesday of each month at 5:30 p.m. in City Hall, 933 Terrace Street.

5. REGULAR AND SPECIAL MEETING NOTICE (POSTING) REQUIREMENTS.

- a) For regular meetings of the Commission, the Clerk shall post at the City Hall, within three (3) days after the first meeting of the Commission in each calendar year, a public notice stating the dates, times, and places of its regular meeting for the year.
- b) For a rescheduled regular or a special meeting, of the Commission, a public notice stating the date, time, place and reason of the meeting shall be posted in City Hall at least 18 hours before the meeting.
- c) However, such notice, as described in 5a and b above, is not required for a meeting of the Commission in emergency session in the event of a widespread natural disaster or a severe and imminent threat to the health, safety or welfare

of the public when two-thirds of the members of the Commission determine that delay would be detrimental to the City's efforts in responding to the threat.

6. MAILINGSHARING OF MEETING AGENDAS AND PACKETS

City Clerk shall upload every regular City Commission meeting packet to the city's website at least 84 hours prior to the start of the meeting. Additionally, upon written request of an individual, organization, firm or corporation, and upon the requesting party's payments of an annual fee of not more than the reasonable estimated cost for printing and postage of such notices, the Clerk shall send to the requesting party by first class mail a copy of regular meeting agendas. Upon written request, the Clerk shall provide a copy of such notices of Meetings to any newspaper published in the City of Muskegon and to any radio and television station located in Muskegon County free of charge.

7. MINUTES OF REGULAR AND SPECIAL MEETINGS

- a) A journal of the proceedings of each regular and special meeting will be kept in the English language by the Clerk and shall be signed by the City Clerk, upon approval of Commission.
- b) Unapproved minutes of regular or special meetings will be available for public inspection not more than eight business days after such meeting.
- c) Approved minutes will be available for public inspection not later than five business days after the meeting at which the minutes were approved.

B. MEETING PROCEDURES:

1. MEETINGS TO BE PUBLIC

All regular and special meetings of the City Commission shall be open to the public and citizens shall have a reasonable opportunity to be heard under such rules and regulations as the Commission may prescribe.

2. ORDER OF BUSINESS

An agenda for each Regular Commission meeting shall be prepared by the Mayor, City Manager, or City Clerk in accordance with the following order of business:

- a. Call Meeting to Order/Welcome
- b. Prayer
- c. Pledge of Allegiance
- d. Roll Call
- e. ~~Honors and Awards~~ Honors and Awards
- f. ~~Consent Agenda~~ Public Comment on Agenda Items
- g. ~~Public Hearings~~ Consent Agenda
- h. ~~Communications~~ Public Hearings
- i. ~~City Manager's Report~~ Unfinished Business
- j. ~~Unfinished Business~~ New Business
- k. ~~New Business~~ Any Other Business
- l. ~~Any Other Business~~ Public Comment on Non-Agenda Items
- m. ~~Public Comment on Non-Agenda Items~~ Adjournment
- n. Adjournment

3. QUORUM

Four (4) members of the Commission in office at the time shall be a quorum for the transaction of business.

4. PRESIDING OFFICER

The presiding officer shall be responsible for enforcing the Rules of the City Commission, contained herein, as well as the Code of Conduct. The Mayor shall be the presiding officer of the Commission. In the absence of or disability of the Mayor, the Vice-Mayor shall be the presiding Officer of the Commission. In the absence or disability of both, the Commission may designate another of its members to serve as presiding during such absence or disability.

C. CLOSED MEETINGS:

1. PURPOSE

The City Commission may only meet in closed session for purposes defined in the Michigan Open meetings Act as follows:

- a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, when the named person requests a closed hearing.
- b) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement or related issues when either negotiating party requests a closed herein
- c) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained. This does not include the sale, lease or other conveyance of City property to others.

- d) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial effect on the litigating or settlement position of the Commission.
- e) To review the specific contents of an application for employment or appointment to a public office when the candidate requests that the application remain confidential. All interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.
- f) To consider material exempt from discussion or disclosure by state or federal statute.

2. CALLING CLOSED SESSIONS:

A two-thirds roll call vote of the Commission members elected and serving shall be required, except under Sections (a) and (b) above. The roll call vote shall be taken at an open meeting and the purpose for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

3. MINUTES OF CLOSED MEETINGS

A separate set of minutes shall be taken by the Clerk or the designated Secretary at the closed session. These minutes will be retained by the Clerk of the Commission, shall not be available to the public, and shall be disclosed if required by a civil action. These minutes shall be kept for a period of one year from the date of the closed meeting.

4. CONFIDENTIALITY OF CLOSED MEETING INFORMATION

A City Commission member shall not divulge to an unauthorized person confidential information discussed in an executive session in advance of the time prescribed for its authorized release to the public by the City Commission. Commission members shall honor the confidentiality of the debate, discussion, and preliminary action taken in executive session, and be aware of the potential financial liability and/or harm to the reputation of the City by premature disclosure.

D. VOTING AND DISCUSSION:

1. ROLL CALL

In all roll call votes, the names of the members of the Commission shall be called. A vote upon all ordinance enactments, rezoning issues, and liquor license requests shall be taken by a roll call vote and entered upon the records.

2. RESULTS OF VOTING

In all cases where a vote is taken, the Chair or Clerk shall declare the result.

3. DUTY TO VOTE

Whenever a question is put before the Chair, every member shall vote, provided however, that no member shall be required to vote if:

- a) That member shall have a conflict of interest and shall state his/her conflict of interest, or.
- b) That member shall state that he/she has inadequate information upon which to base a reasonably informed vote and shall state the particulars of the information desired before a reasonable informed vote can be cast.

Absence from a prior meeting shall not constitute the basis of the lack of information referred to above

If a member is precluded from voting pursuant to a conflict of interest, that member shall refrain from participating in the discussion on the issue.

4. CONDUCT OF DISCUSSION

The maker of the motion shall speak first, and the supporter of the motion shall speak second. During Commission discussion and debate, no member shall speak until recognized for the purpose by the Chair. After such recognition the member shall confine discussion to the question at hand. Personal comments about other individuals should be avoided. When addressing other members of the Commission they should be addressed by title and/or last name but not by first name. No member should request to speak a second time on a motion as long as another is requesting recognition to speak for a first time. **After every member of the Commission has had the opportunity to speak on an item for the first time, the Mayor may ask if any member of the Commission would like to make a motion to call the question. If a motion is made and seconded, debate shall stop immediately and the Mayor will take a vote on the motion to call the question by a show of hands; if 2/3 of the present Commissioners agree to end the debate, the Clerk shall immediately take a roll call vote on the underlying motion. If the motion to call the question fails to garner the support of 2/3 of the present Commissioners, debate will continue; once every member has had an opportunity to speak on the item for a second time, the Mayor may ask if any member of the Commission would like to make a motion to call the question, and the process described above will repeat itself.**

5. COMMISSION MEMBER REQUESTS FOR POSTPONEMENTS

Requests for postponements on agenda items from members of Commission requires approval by a majority of Commission present.

6. RULES OF PARLIAMENTARY PROCEDURE

The rules of parliamentary practice as contained in Robert's Rules of Order, most recent edition, shall govern the Commission in all cases to which they are applicable, provided they are not in conflict with these Rules or with the Ordinances and Charter of the City of Muskegon.

7. RECONSIDERATION OF MOTIONS

When a question has been decided, it shall be in order for any Commission member who voted on the prevailing side of the question to move the reconsideration at the same meeting or at the next regularly scheduled meeting provided no action has been taken as a result of the previous vote.

8. GENERAL CONSENSUS

General consent or consensus may be used to give direction and the minutes should indicate that a majority consented.

E. CITIZEN PARTICIPATION:

1. GENERAL

Each Commission meeting agenda shall provide for reserve time for audience participation, as requested

2. REQUESTS TO SPEAK, LENGTH OF PRESENTATION - PUBLIC HEARINGS AND PARTICIPATION

Members of the public at the meeting shall not speak unless recognized by the chair. Members of the public shall be limited to speaking for a maximum of three (3) minutes during any public hearing or public comment. A person representing a group and speaking on behalf of the group shall be allowed ten (10) minutes to address Commission; they must first submit a written request form with the City Clerk prior to start of the meeting at which they wish to speak.

3. PERSONS ADDRESSING THE COMMISSION

Prior to addressing Commission, members of the public shall step up to the microphone/podium and state their name and address and, if appropriate, group affiliation. The Commission may in its discretion limit public comments to new information or matters not fully addressed at any previous meeting regarding the agenda item at issue.

4. ~~DEVIATION REQUESTS TO SPEAK ON AN AGENDA ITEM~~

~~Either in his/her discretion, or upon the request of a member of the Commission, the Mayor may recognize a member of the audience who shall be permitted to address the Commission at a time other than audience participation; however, all other rules as provided herein shall apply.~~ Prior to the start of the meeting, any member of the public may submit a written request form to the City Clerk requesting to speak on an agenda item. All written requests will be honored under the Item F – Public Comment on Agenda Items. All comments shall be directed to the Mayor; Commissioners shall not engage in dialogue, debate, or negotiation with commenters.

5. REQUESTS TO SPEAK DURING PUBLIC PARTICIPATION.

- a. Any person who wishes to speak on a subject not on the printed agenda may speak at this time. All rules of conduct still apply.
- b. Candidates or any person(s) working for a candidate shall not be allowed to use public participation time for campaigning.

6. DISORDERLY CONDUCT AT MEETINGS.

Persons addressing the Commission shall make responsible comments and shall refrain from making personal, impertinent, slanderous or profane remarks. The Chairperson may call to order any person who is being disorderly by speaking when not recognized by the chair or otherwise disrupting the proceeding by failing to be germane, by speaking longer than the allotted time, or by speaking vulgarities. Such persons shall thereupon be seated until the Chair shall have determined whether the person is in order. If a person so engaged in presentation shall be called out of order, he or she shall not be permitted to speak at the same meeting, except upon special leave by the Commission. If the person shall continue to be disorderly and disrupt the meeting, the chair may order the Police Department to remove the person from the meeting.

F. AGENDA:

1. PREPARATION

The City Manager and City Clerk shall prepare an agenda for each regular or special meeting of the City Commission. The deadline for submitting items for Commission agenda is 4:00 p.m. on the Tuesday preceding the Tuesday of the Commission meeting to the City Clerk. Agenda items from Commission members should be submitted in writing by this same time to the City Manager. Requested items will appear on a meeting agenda within three meetings after request is made.

2. DISTRIBUTION

Agendas, ordinances and all related background material will be delivered to City Commission members ~~at their requested location,~~ **via email**, the Thursday before the scheduled regular meeting, or at least 12 hours before a scheduled special meeting.

3. AGENDA MATERIAL

Department Heads and all others shall submit written requests for inclusion on the agenda to the City Clerk with necessary supporting data. Written presentations shall be submitted by 4:00 p.m. on the Tuesday preceding the Tuesday Commission meeting for circulation with agendas. Agenda requests could be delayed to a later meeting if related information is not received by the City Clerk in a timely manner.

G. CONSENT AGENDA:

1. PURPOSE.

Consent agenda will be used to allow the City Commission to act on many items at one time.

2. AGENDA ITEMS.

A consent agenda will be developed by the City Clerk and/or City Manager prior to the regular meeting items. ~~that could be included on this agenda include non-controversial items such as approval of minutes, payment of bills, approval of recognition resolutions, pay raises, etc.~~ Any action items not requiring a formal public hearing may be included in the Consent Agenda. Any member of the Commission may request that an item be removed from the consent agenda and placed on the regular agenda for discussion.

H. **RECORDING OF COMMISSION MEETINGS:**

1. MEETINGS MAY BE RECORDED

All regular or special meetings of the City Commission may be recorded through the use of audio/visual electronic devices. Such recordings will be under the control and supervision of the City Clerk. .

2. RETENTION OF RECORDS

Any recordings from Commission meetings may be retained by the City Clerk ~~for a period of two (2) years from the date of the meeting~~ until the meeting minutes are approved.

I. **MISCELLANEOUS:**

1. AMENDMENTS TO RULES

The rules of the City Commission may be altered or amended by a majority vote of two-thirds of the entire Commission.

2. SUSPENSION OF RULES

The rules of the City Commission may be suspended for good cause for a specified portion of a meeting by a two-thirds majority of the entire Commission.

3. CONTROLLING AUTHORITY

These rules shall control, unless preempted by City Charter, State laws or the Court.

4. REVIEW OF CONSULTANTS

City Commission shall make an annual internal evaluation of consultants at the time of review of the City budget to determine if the services being provided are satisfactory and if judged to be inappropriate, will move to proceed with establishing a more formal review process.

5. RESOLUTIONS OF RECOGNITION

Requests for resolutions will be made and acted on at the Community Relations Committee Meeting. All Commissioners will sign resolutions voted on and approved. As Mayor, the Mayor can sign any other resolutions.

J. COMMITTEE ASSIGNMENTS

1. ASSIGNMENTS

The Mayor may assign Commission members to any committee as is deemed necessary, with approval of the City Commission.

2. RESPONSIBILITIES

Commission member's responsibilities as committee members will be generally limited to policy and not the administration of a department or appointed organization.

K. CITY MANAGER EVALUATION PROCESS

The City Manager will be evaluated by the members of the City Commission before July 1st each year. Forms and materials will be sent out by the City Clerk and all completed forms will be returned to the City Clerk for compiling. A report will be generated by the City Clerk with the results of the evaluations. A meeting with the City Manager and City Commissioners will be scheduled to review the evaluations.

L. ITEMS REQUIRING CITY COMMISSION APPROVAL

The City Commission authorizes the City Clerk, City Manager, and Department Heads to exercise discretion when determining which items require formal City Commission approval and must be included on a City Commission Agenda. Regardless of such discretion, the following items must be presented to the City Commission for formal action:

1. All items in which City Charter, State, or Federal rules/regulations require legislative body approval.
2. The annual operating budget and amendments thereto.
3. All formal City Commission policies and procedures and amendments thereto.
4. All Ordinances and amendments thereto.
5. All purchases over \$12,500 for which an appropriation has been not previously established as part of the adopted or amended annual budget. Effective July 1, 2021, this amount shall increase to \$15,000.
6. All purchases over \$30,000, even if an appropriation has been previously established as part of the adopted or amended annual budget.
7. The purchase or sale of real property.
8. Borrowing of funds.
9. All formal agreements between the City and another party that extend beyond two years in duration or result in expenses to the City in excess of \$25,000 annually.