CITY OF MUSKEGON

CITY COMMISSION MEETING

AUGUST 14, 2018 @ 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:**

A. **Presentation of 2018 Beautification Awards**

- □ **CITY MANAGER'S REPORT:**
- □ **CONSENT AGENDA:**

A. **Approval of Minutes** City Clerk

B. **Special Event Liquor License – Farmers Market for Farm to Table Dinner** – City Clerk

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

D. **Annex Lease** City Manager

E. **Purchase Agreement – 880 First** City Manager

F. **1000 West Western Avenue Sale and Development Agreement** City Manager

G. **Memorandum of Understanding – Justice Assistance Grant** Public Safety Director

H. **Rezoning Request for a Portion of the Property at 710 Pulaski Avenue 2nd Reading** Planning & Economic Development

I. **Sale of City-Owned Property at 1870 Huizenga Street & 1080 E. Holbrook Avenue** Planning & Economic Development

J. **Sale of City-Owned Property in the Seaway Industrial Park** Planning & Economic Development

K. <u>Launch Ramp Ordinance Change</u> Department of Public Works

L. <u>City Survey Services</u> Department of Public Works

M. <u>Landscaping</u> DPW/Filtration

N. <u>Fence Replacement</u> DPW/Filtration

O. <u>Excavating</u> DPW/Filtration

P. <u>Membrane Roof on Clearwells</u> DPW/Filtration

Q. <u>Salt Box</u> DPW/Equipment

R. <u>Concrete Breaker</u> DPW/Equipment

S. <u>Back Hoe</u> DPW/Equipment

T. <u>City Manager Employment Agreement</u> Mayor's Office

U. <u>Adopt a Resolution Approving the Liquor License Application for Pigeon Hill Brewing Company, LLC</u> City Clerk

V. <u>Arena Lease and Management Agreement – Rad Dad's</u> City Manager

□ **PUBLIC HEARINGS:**

□ **COMMUNICATIONS:**

□ **UNFINISHED BUSINESS:**

□ **NEW BUSINESS:**

A. <u>City-MDOT Agreement; Black Creek Road; Sherman Blvd to Latimer Drive</u> DPW/Engineering

B. <u>City Hall Duct Cleaning</u> Department of Public Works

C. <u>Steven Street Storm Sewer Outlet Repairs</u> Department of Public Works

D. <u>2018 Capital Improvements Projects – McGraft Park Lot Resurfacing</u> Department of Public Works

□ **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- TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: August 9, 2018

Here is a quick outline of the items on our very full agenda(s):

WORK SESSION

1. Sale of 880 1st Street. Staff has exercised the termination provisions in the option agreement with Port City Construction. John Essex's original purchase offer of $425,000 remains valid. John is working to partner with Smith Equities and 616 Development to move the project forward ASAP. It is our understanding that they should be in a position to break ground in the next 120 days and would carry a 9-10 month building schedule. Staff is recommending the sale.
2. Sale and Development Agreement at 1000 West Western Ave. This has been in process for over a year, and is now ready for formal approval. Derek Coppes from 616 Development will be in attendance to talk about the project.
3. We have finalized the language and costs associated with the lease for Rad Dad's Tacos and Tequila. The project was more costly than originally anticipated, but the original lease document allows automatic increases in the lease payments to account for the additional development costs. We have two documents that will need to be approved:
    a. We have a lease agreement that will outline the lease rate and the obligations of both parties. This lease is unchanged from the lease used to obtain preliminary commission approval, except that we have updated the lease rate and added some language to better protect the city in the event we enter into agreements related to the arena's events that are incompatible to Rad Dad's operations. Examples could include our advertising deals with Pepsi and Bud Light. The lease rate will be set at $19.93/sf for 4,100 square feet = $7,475.03 monthly. The lease is effective retroactively to May 1, 2018.
    b. We have a management agreement that will be in place temporarily until we can make a number of changes to the arena's liquor license. We anticipate that these changes will be in place prior to the end of the year. While the management agreement is in place, Rad Dad's will keep 100% of all non-alcoholic related

income (food, pop, merchandise, etc.), and the city will keep 100% of all alcohol-related income. The city would distribute 10% of alcohol-related income to Rad Dad's as part of the management agreement and use the remaining 90% to cover the cost of the lease and buildout. Any dollars that the city collects above the actual cost of the lease will be used to buy down Rad Dad's rent in the same manner rent was increased as building costs exceeded original estimates.

4. Sale of city-owned property at 1870 Huizenga Street and 1080 E Holbrook. These vacant parcels are zoned industrially, but have been unattractive to industrial end users for a number of years. Newkirk Electric owns property adjacent to these properties and has asked to acquire them and incorporate them into their business plans. Staff is recommending that we sell the parcels for $30,000 and return them to the tax roll.
5. Sale of city-owned property in the Seaway Industrial Park. The city issued an RFP for Medical Marihuana related purchases. We received one proposal and will be recommending approval. The purchase price will be $300,000 for Lots 1 and 2.
6. Annex Lease Termination. We are proposing that the attached lease termination agreement be approved. The operation has not worked out the way we anticipated, and both parties see the value in parting ways. We will take some obligations as part of the termination in exchange for personal property related to the business's operation. We will also begin collecting the sub-lease income from Mercy Health effective July 1, 2018. We have a new operator lined up and hope to be in a position to bring him in front of the commission soon.

REGULAR MEETING

1. We will honor our Beautification Awards winners!
2. 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 a special event liquor license for the Farm to Table Dinner at the Farmers Market. This is our third annual fundraiser.
    c. Designation of voting delegates for the MML's annual business meeting at the Convention in Grand Rapids next month. The Mayor will serve in that capacity and I will be the alternate.
    d. Annex lease termination agreement, as presented at the work session.
    e. 880 First Purchase Agreement, as presented at the work session.
    f. Sale of 1000 West Western, as presented at the work session.
    g. Agreement for the distribution of the 2018 Justice Assistance Grant between Muskegon and Muskegon Heights.
    h. Rezoning of 710 Pulaski Ave from Light Industrial to B-4 General Business, as recommended by the Planning Commission.

i. Sale of 1870 Huizenga and 1080 Holbrook to Newkirk Electric, as presented at the work session.
j. Sale of City-owned property in the Seaway Industrial Park, as presented at the work session.
k. Approval of changes to the launch ramp ordinance
l. Authorization to enter into a contract with Fleis & VandenBrink Engineering for survey work associated with upcoming projects. The cost will not exceed $27,110.
m. Authorization to proceed with capital improvements (landscaping) at the Filtration Plant. The cost is $35,495.
n. Authorization to proceed with capital improvements (fencing) at the Filtration Plant. The cost is $89,500.
o. Authorization to proceed with capital improvements (excavating) at the Filtration Plant. The cost is $88,365.
p. Authorization to proceed with capital improvements (membrane roof) at the Filtration Plant. The cost is $440,000.
q. Purchase of one salt box from Arista Truck Systems. The cost is $14,999.
r. Purchase of one concrete breaker from Midland Engine. The cost is $12,500.
s. Purchase of one backhoe from Michigan Cat. The cost is $97,053.00
t. City Manager Employment Agreement

3. Under the New Business, we are asking the Commission to consider the following:
   a. We are seeking approval to enter into a contract with MDOT for the Black Creek Road construction between Sherman and Latimer. The city's cost is estimated at $228,100.
   b. Cleaning of duct work at city hall. We would like to contract with Modernistic at a cost of $9,899.
   c. Staff is seeking permission to spend $15,143.20 to repair the Stevens Street Sewer Outlet. The sewer outlet is failing and is in need of repair. DPW crews will provide the labor.
   d. McGraft Park Parking Lot Resurfacing. We are seeking permission to enter into an agreement with Accurate Excavators for $108,512.29.

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

Date: August 8, 2018

To: Honorable Mayor and City Commissioners

From: Ann Marie Meisch, City Clerk

RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the July 24, 2018 Regular Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON

CITY COMMISSION MEETING

JULY 24, 2018 @ 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, July 24, 2018. Reverend Robert Henderson, First Wesleyan Church, 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 Ken Johnson, Byron Turnquist, and Debra Warren, City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioners Willie German Jr., and Dan Rinsema-Sybenga

2018-55 CONSENT AGENDA:

A. <u>Approval of Minutes</u> City Clerk

SUMMARY OF REQUEST: To approve minutes of the July 9, 2018 Worksession Meeting and the July 10, 2018 Regular Meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. <u>L-3 Communication Quote</u> DPW

SUMMARY OF REQUEST: The Equipment Division is requesting permission to order new Police in-car DVR units along with new computer server to download DVR video for storage. Current server is at end of life and will no longer be supported past the end of August.

FINANCIAL IMPACT: $68,658.35 from the Equipment Budget and $16,452.00 from the Public Safety Budget.

BUDGET ACTION REQUIRED: None. Amount is what was budgeted.

STAFF RECOMMENDATION: Authorize staff to order new server and DVR units from L-3 Mobile Visions.

C. **Rezoning Request for a Portion of the Property at 710 Pulaski Ave** Planning & Economic Development

SUMMARY OF REQUEST: Request to rezone a portion of the property at 710 Pulaski Avenue from I-1, Light Industrial to B-4, General Business.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommends approval of the rezoning.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended approval of the request at their July 12 meeting, with four members absent.

D. **Launch Ramp Ordinance Change** DPW - REMOVED PER STAFF REQUEST

E. **First Amendment to Contract for Housing Exemption for Royale Glen Townhomes** Planning & Economic Development

SUMMARY OF REQUEST: Hackley-Barclay and the City entered into a Contract for Housing Exemption on November 23, 1993, in which the City granted Hackley-Barclay a payment in lieu of taxes (PILOT) to help finance the construction of 78 townhouses at Royale Glen Townhomes. The PILOT that was granted was under the City's old PILOT exemption ordinance, which stated that the PILOT exemption would terminate if the property receiving the exemption was refinanced; however, the City's PILOT ordinance has since been amended in a way that would allow Hackley-Barclay to obtain the necessary financing and still maintain the PILOT exemption.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the amended contract.

Motion by Commissioner Turnquist, second by Commissioner Johnson, to approve the consent agenda as presented.

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

Nays: None

MOTION PASSES

2018-56 NEW BUSINESS:

A. **Concurrence with the Housing Board of Appeals Notice and Order to Demolish** Public Safety

328 Catherine Ave

720 Amity Ave

1774 6th Street (Commercial Storage Building)

SUMMARY OF REQUEST: This is to request that the City Commission concur with the findings of the Housing Board of Appeals that the structures are unsafe, substandard, a public nuisance and that they be demolished within thirty (30) days or infraction tickets may be issued. It is further requested that administration be directed to obtain bids for the demolition of the structures and that the Mayor and City Clerk be authorized and directed to execute contracts for demolition with the lowest responsible bidder or staff may issue infraction tickets to the owner, agent or responsible party if they do not demolish the structure.

FINANCIAL IMPACT: General Funds

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

Motion by Commissioner Turnquist, second by Commissioner Johnson, to concur with the Housing Board of Appeals decision to demolish 328 Catawba, 720 Amity, and 1774 6th Street (Commercial Storage Building).

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

Nays: None

MOTION PASSES

B. Rezoning Request for a Portion of the Property at 306 Campbell St
Planning & Economic Development

SUMMARY OF REQUEST: Request to rezone a portion of the property at 306 Campbell Street from R-1, Low Density Single Family Residential to I-1, Light Industrial.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff does not recommend approval of the rezoning, based on the findings in the Master Land Use Plan.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended denial of the request at their July 12 meeting, with four members absent.

Motion by Vice Mayor Hood, second by Commissioner Warren, to concur with the Planning Commission and staff recommendation to deny the application for rezoning at 306 Campbell Street.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner Warren asked for a review of our ordinances related to dogs. There are many sides to this ordinance and an overview was provided by Chief Lewis.

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission meeting adjourned at 7:02 p.m.

Respectfully Submitted,

Ann Marie Meisch, City Clerk, MMC

Date: August 8, 2018

To: Honorable Mayor and City Commissioners

From: CITY CLERK'S OFFICE

RE: Special Event Liquor License – Farmers Market for Farm to Table Dinner

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SUMMARY OF REQUEST: The Muskegon City Clerk's Office is organizing our 3rd annual Farm-to-Table fundraiser dinner to benefit the Muskegon Farmers Market and is seeking City Commission approval to apply for a license for Beer, Wine, and Spirit sales for this event. The Farmer's Market does have a liquor license but the licensed area does not extend beyond the barn.

FINANCIAL IMPACT: $50 permit from the State for every date requested.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve a special liquor license for the September 6, 2018 Farm-to-Table Fundraiser dinner.

Date: August 8, 2018

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

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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 on other official to serve as an alternate.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

michigan municipal league

1675 Green Road
Ann Arbor, MI 48105-2530

T 734.662.3246
800.653.2483
F 734.662.8083
mml.org

July 18, 2018

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 Grand Rapids, September 20-22, 2018. The League's **"Annual Meeting"** is scheduled for 3:45 pm on Friday, September 21 in Ambassador Ballroom West at the Amway Grand Plaza Hotel. 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, 2018.**
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, 2018.**

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, 2018. 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."

3. <u>Posting of Proposed Resolutions and Core Legislative Principles</u>

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 Thursday, September 20 at Amway Grand Plaza Hotel for the purpose of considering such other matters as may be requested by the membership, in addition to other agenda items.

Sincerely,

Catherin Bostick-Tullius	Daniel P. Gilmartin
President	Executive Director & CEO
Commissioner, City of Lapeer	

AGENDA ITEM NO. _______________
CITY COMMISSION MEETING ___________________________

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: July 14, 2015

RE: Annex Lease

SUMMARY OF REQUEST:
The City entered into a lease with ImaJam, Inc. in 2015. ImaJam planned to operate a sports training facility on the site. The owner has been unsuccessful in his attempts to do so. Both parties feel that it is in the best interest of the community to terminate the lease and allow the city to find a new operator for the site. As part of the lease termination, the City will maintain the existing lease with Mercy Health, Inc., which has three years remaining on the in initial term and one additional 5-year extension. Additionally, the City will take ownership of the personal property located on site as well as the related financial obligations associated with that personal property. City staff has been working with local investor that has a strong interest in stepping in to operate the facility; an agreement should be ready for Commission consideration in the next 60 days.

FINANCIAL IMPACT:
None at this time

BUDGET ACTION REQUIRED:
None at this time

STAFF RECOMMENDATION:
To approve the request and authorize staff to sign the lease termination.

COMMITTEE RECOMMENDATION:
None.

TERMINATION OF LEASE

This Termination of Lease (“Agreement”) is made effective as of _______________, 2018 (“Effective Date”), by and between the **City of Muskegon**, a Michigan municipal corporation (“Landlord”), and **ImaJam, Inc.**, a Wyoming corporation (“Tenant”), with regard to the following facts:

Background

Landlord owns certain real property commonly known and designated as part of 955 Fourth Street, Muskegon, Michigan 49440 (“Premises”). The Premises are connected to the facility commonly known as the LC Walker Arena. Landlord and Tenant entered into that certain LC Walker Annex Lease Agreement dated August 6, 2015, by which Landlord leased the Premises to Tenant for the limited purpose of conducting a sports performance and physical therapy rehab center and related activities (“Lease”). The parties agree to terminate the lease and all other agreements related to the Lease, whether written or unwritten, between the above-listed parties related to the use or occupancy of the Premises upon the terms and conditions of this Agreement.

Therefore, the parties agree as follows:

1. **Termination of Lease.** As of the Effective Date of this Agreement, the Lease is hereby revoked and terminated.

2. **Payments.** Tenant shall be responsible to pay past utility bills, and other charges due in relation to Tenant’s occupancy of the Premises on or before the termination of the lease.

3. **Property.** The parties agree that the Personal Property and trade fixtures shall remain on the Premises and become the property of Landlord as of the Effective Date.

4. **Tenant Representations.** Tenant represents that (a) Tenant owns the Personal Property free and clear and has good right to transfer the Personal Property to Landlord; (b) nothing has been done or suffered by which the leasehold interest under the Lease has been encumbered in any way whatsoever other than any encumbrance created by Landlord; (c) Tenant owns the leasehold interest under the Lease and has good right to surrender the Lease to Landlord; and (d) no person other than Tenant has acquired, through or under Tenant, any right, title, or interest in or to the leasehold interest under the Lease or in or to the Premises. Tenant further represents that as of the date of this Agreement, Landlord is not in default in any manner under the Lease.

5. **Landlord Responsibilities.** Landlord agrees to honor the terms of the executed lease between tenant and Mercy Health Partners. Landlord further agrees to compensate with Muskegon Quality Builders for past construction activities at a rate of one-thousand five hundred dollars ($1,500) monthly for 70 consecutive months beginning January 1, 2019. Landlord further agrees to compensate The Muskegon Angels for past personal property investments at a rate of one-thousand dollars ($1,000) monthly for 60 consecutive months beginning January 1, 2019.

6. **Release.** Effective upon the performance by both parties of all of their respective obligations under this Agreement, Landlord and Tenant mutually release, acquit and discharge each other from any and all claims and actions, causes of action, demands, rights, damages, costs, expenses, penalties and compensation of any nature that each may have against the other related to the Lease.

7. **Counterpart/Fax Copies.** This Agreement may be executed in counterparts and shall be binding on the parties when all parties have received counterpart signatures. Fax copies of signature pages shall be fully effective and binding.

The parties have executed this Agreement to be effective as set forth in this Agreement.

Landlord – City of Muskegon, a Michigan municipality

By: ________________________________
Name: ________________
Title: _________________
Date: March ___, 2018

Tenant – ImaJam, INC., a Wyoming corporation

By: ________________________________
Name: Terrence J. Williams
Title: _________________
Date: March ___, 2018

AGENDA ITEM NO. ________________
CITY COMMISSION MEETING ____________________________

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: August 7, 2018

RE: Purchase Agreement - 880 First

SUMMARY OF REQUEST:
City staff is seeking permission to enter into a purchase agreement with Core Development for 880 First Street. This building was acquired by the City of Muskegon in 2015. The $425,000 purchase price will reimburse the City's Public Improvement Fund most of the $500,000 invested in the property to-date. The remainder of the investment will be recovered in the initial years of completion of the development as a result of income tax revenues. The property is located in the Downtown Development Authority, and any incremental property tax growth will benefit that component unit of the City's budget.

FINANCIAL IMPACT:
$425,000 minus closing costs deposited into the City's Public Improvement Fund.

BUDGET ACTION REQUIRED:
None at this time.

STAFF RECOMMENDATION:
To authorize the city manager to enter into a sales agreement to sell the property at 880 First Street for $425,000 to Core Development.

COMMITTEE RECOMMENDATION:

COMMERCIAL ALLIANCE OF REALTORS

COMMERCIAL ALLIANCE OF REALTORS®
OPTION TO PURCHASE AGREEMENT
FOR OFFICE, COMMERCIAL, INDUSTRIAL and MULTIFAMILY PROPERTY

Office of: Core Realty Partners ,Broker, Michigan

Phone: 231-375-5273 FAX: ______ Date: July 3, 2018, Time: ______

1. **OPTION.** In consideration of the payment of the Option Price specified herein, the undersigned Seller hereby grants to the undersigned Buyer the exclusive right and option to purchase the Premises commonly known as:

 880 First Street, Muskegon, MI,

 Permanent Parcel Number 61-24-205-310-0012-00, as more fully described in the attached Buy and Sell Agreement for those Premises, for the purchase price and on the terms and conditions specified therein, which option shall expire at 5 p.m. local time on the 3rd day of October, 2018, if not exercised by that time.

2. **OPTION PRICE.** The Option Price shall be Four hundred twenty-five thousand and 00/100---------------------------------- Dollars ($425,000) and shall be paid to the undersigned Seller on or before the expiration of TBD hours after the time of Buyer's receipt of acceptance noted below. Time is of the essence regarding this payment, and this Option Agreement shall be of no force or effect if the payment is not made within the time specified. The Option Price and any additional consideration given for extensions, if any, shall be applied to the purchase price if the option is exercised; otherwise the Option Price shall be retained by Seller as compensation for the grant of the option.

3. **EXERCISE.** The option shall be exercised, if at all, by written notice of exercise, and either delivered personally or by certified mail or other form of documentable delivery addressed to the parties at their addresses specified in the proximity of their signatures below, and any notices given by mail shall be deemed to have been given as of the date of the postmark. The attached Buy and Sell Agreement shall be deemed to have been signed simultaneously by the Buyer and the Seller as of the time this option has been exercised.

4. **EXTENSIONS.** Buyer shall have the right to extend the period for exercise of this option for extension through mutual agreement (______) additional period(s) of ______ (______) days each upon the payment of ______ Dollars ($______) for each extension. Any extension shall be obtained, if at all, by written notice of extension to the Seller, delivered in the manner provided in this Agreement, accompanied by a certified check, or cashier's check issued by a commercial bank in the amount specified above in this Agreement.

5. **ASSIGNMENT.** Buyer may assign this option and/or the Buyer's rights and obligations under the attached Buy and Sell Agreement to another person or entity, but only with the prior written consent of Seller, which consent shall not be unreasonably withheld.

6. **AUTHORITY OF PARTIES.** Each of the undersigned individuals who have signed this Agreement on behalf of Seller and Buyer entities represent and warrant that he/she is authorized to sign this Agreement on behalf of such party and to bind such party to the requirements of this Agreement.

7. **BINDING EFFECT.** This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and permitted assigns. This Agreement and the attached Buy and Sell Agreement, shall be interpreted and construed as integrated parts of the same agreement, and there are no other representations, promises, or agreements with respect to the transaction described therein except as expressly set forth therein. These Agreements may be supplemented, modified, or otherwise amended only by written instrument signed by the parties.

8. **ATTORNEY'S FEES.** In the event of litigation arising from the failure or alleged failure of either party to perform its obligations under this Agreement, the party prevailing in that litigation (including appeals of all levels) shall be entitled to collect its court costs and reasonable attorneys' fees incurred in connection with such litigation from the other party. The provisions of this Section shall survive Closing or termination of this Agreement.

9. **OTHER PROVISIONS.**

 None

10. **BROKERAGE FEE.** Seller and/or Buyer agrees to pay the Broker(s) involved in this transaction a brokerage fee as specified in any agency agreement or other written agreement between them. In the event no such agreement exists, ☐ Buyer ☐ Seller agrees to pay a brokerage fee of NA. This brokerage fee shall be paid in full promptly after it is earned, but not later than any applicable closing. Unless otherwise previously agreed, Buyer and/or Seller agrees that the brokerage fee may be shared by the recipient with any cooperating broker who participates in the sale, in such amount as the recipient decides, without further disclosure to or consent from Buyer and/or Seller. Exceptions:

11. **ACKNOWLEDGEMENT.** By signing below, the Buyer acknowledges having read and received a copy of this Agreement and the attached Buy and Sell Agreement.

Witness: ______________________ Buyer: B. John Essex

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Note: Please sign as you wish your name to appear on final papers

Phone: ______________________ Buyer: ______________________

Note: Please sign as you wish your name to appear on final papers

Buyer's Address: ______________________ Phone: ______________________

______________________ Email: ______________________

SELLER'S ACCEPTANCE

Date: ______________________; Time: ______________________

12. The above offer is hereby accepted:

By signing below, the Seller acknowledges having read and received a copy of this Agreement and the attached Buy and Sell Agreement.

Witness: ______________________ Seller: ______________________

Note: Please sign as you wish your name to appear on final papers

Phone: ______________________ Seller: ______________________

Note: Please sign as you wish your name to appear on final papers

Seller's Address: ______________________ Phone: ______________________

______________________ Email: ______________________

Seller gives Broker above named until ______________________ (time) ______________________ (date), to obtain Buyer's written acceptance of counter offer, if any.

BUYER'S RECEIPT OF ACCEPTANCE

Date: ______________________; Time: ______________________

13. Buyer acknowledges the receipt of Seller's acceptance of Buyer's offer. If the acceptance was subject to changes from Buyer's offer, the Buyer agrees to accept those changes, all other terms and conditions remaining unchanged.

Witness: ______________________ Buyer: ______________________

Buyer: ______________________

SELLER'S RECEIPT OF ACCEPTANCE

Date: ______________________; Time: ______________________

14. Seller acknowledges receipt of a copy of the Buyer's acceptance of the counter-offer (if Seller made a counter-offer).

Witness: ______________________ Seller: ______________________

Seller: ______________________

COMMERCIAL ALLIANCE OF REALTORS

BUY AND SELL AGREEMENT
FOR OFFICE, COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY

Office of Core Realty Partners, BROKER,

(city), Michigan Phone: 231-375-5362 Fax:

Email: troywasserman@corerealty.com Offer Date: July 3rd, 2018, 12:55 (time)

1. **Agency Disclosure.** The undersigned Buyer and Seller each acknowledge the Broker named above is acting as (choose one):
   ☐ Subagent of the Seller ☐ Agent of the Buyer ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
   ☒ Other (specify): Transaction Coordinator
2. **Buyer's Offer.** The undersigned Buyer hereby offers and agrees to purchase property located in the City of Muskegon, Muskegon, County, Michigan, commonly known as 880 First St.

   Permanent Parcel Number 61-24-205-310-0012-00 and legally described as follows:

   (the "Land"), together with all buildings, fixtures and improvements situated on the Land (the "Improvements"), and all equipment and other personal property listed on Exhibit D (the "Personal Property"), all of which is collectively referred to herein as the "Premises".
3. **Purchase Price.** The purchase price for the Premises is:
   Four Hundred And Twenty Five Dollars

   Dollars ($425,000). Any allocation of the purchase price between Land, Improvements, and Personal Property shall be set forth on an attached Exhibit.
4. **Payment of Purchase Price and Financing.** Complete subparagraph "A" and subparagraph "B".
   A. **Terms of Payment.** The purchase price shall be paid at the closing by Buyer to Seller as indicated by "X" below (mark one box or the other under this subparagraph "A").

   ☒ **Cash.** Buyer shall pay the full purchase price to Seller upon execution and delivery of warranty deed and performance by Seller of the closing obligations specified in this agreement.

   ☐ **Land Contract.** Buyer shall pay the full purchase price to Seller pursuant to the terms and conditions stated in the Commercial Alliance of REALTORS® Land Contract form, unless the parties mutually agree upon a different form of land contract, upon performance by Seller of the closing obligations specified in this Agreement. The Land Contract shall provide a down payment of $______ and payment of the balance $______ in ______ installments of $______ or more, at Buyer's option, including interest at the rate of ____% per annum computed monthly, interest to start on date of closing, and first payment to become due ______ after date of closing. The entire unpaid balance will become due and payable ______ months after closing. Seller understands that consummation of the sale or transfer of the Premises shall not relieve Seller of any liability that Seller may have under the mortgage(s) to which the Premises are subject, unless otherwise agreed to by the lender or required by law or regulation.

   B. **Financing.** Indicate by an "X" below which applies (mark one box or the other under this subparagraph "B").

   ☒ **No Financing Contingency.** Buyer's obligation to purchase the Premises is not contingent upon Buyer obtaining financing for all or any portion of the purchase price.

   ☐ **Financing Contingency.** Buyer's obligation to purchase the Premises is contingent upon Buyer obtaining financing for the purchase of the Premises that is acceptable to Buyer, in Buyer's sole and absolute discretion, within ______ (___) calendar days of the Effective Date of this Agreement (the "Financing Contingency Period"). Buyer agrees to diligently pursue in good faith obtaining financing for the purchase of the Premises. If after making such diligent effort Buyer fails to obtain financing for the purchase of the Premises that is acceptable to Buyer within the Financing Contingency Period, then Buyer may terminate this Agreement without liability and receive a refund of any deposit by delivering a written notice of termination to Seller in accordance with this Agreement within the Financing Contingency Period. If Buyer does not deliver a written notice of termination to Seller within the Financing Contingency Period, then Buyer shall be deemed to have waived this financing contingency.
5. **Survey.** Seller shall provide Buyer with a copy of any existing survey of the Premises that Seller has in Seller's possession within five (5) days of the date of the Effective Date. In addition, (select one of the following):

   ☒ A new survey:
   - ☐ ALTA showing all easements of record, improvements and encroachments, if any, and completed to the most current ALTA/NSPS Land Title Survey minimum requirements; or
   - ☐ boundary survey with iron corner stakes and with all easements of record, improvements and encroachments, if any; or

   ☐ A recertified survey; or

   ☐ No new or recertified survey;

   shall be ☒ obtained by Buyer at Buyer's expense; or ☐ provided by Seller to Buyer at Seller's expense, within Forty Five (45) calendar days after the title insurance commitment referenced in this Agreement has been provided by Seller to Buyer under the terms of Title Insurance paragraph contained in this Agreement. If Seller is responsible to provide a new or recertified survey under this paragraph and fails to do so within the required time, then Buyer may order the required survey at Seller's expense. If the new or recertified survey (or absent such the existing survey, if any) discloses any material and adverse encumbrance that is not acceptable to Buyer, then Buyer shall have the right to object and to terminate this Agreement under the terms and conditions set forth in the Title Insurance paragraph contained in this Agreement; otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. Other:

None

6. **Title Insurance.** At Seller's expense, Seller shall provide Buyer with a standard ALTA owner's policy of title insurance in the amount of the purchase price, effective as of the date of closing. A commitment to issue such policy insuring marketable title (as defined in this Agreement) vested in Buyer, including a tax status report, shall be ordered within seven (7) calendar days after the Effective Date, and shall be delivered, with copies of all title exception documents, as soon as feasible thereafter. (Note that some title commitments do not report on the status of oil, gas, or mineral rights.)If any matter disclosed by the title commitment adversely and materially affects the value of the Premises or Buyer's intended use of the Premises, Buyer shall give Seller written notice of the matter within ten (10) calendar days after copies of both the title commitment (and all exception documents identified in the title commitment) and survey referenced in this Agreement are delivered to Buyer. If Seller fails to cure the matter within ten (10) calendar days of receiving written notice (the "Title Commitment Cure Period"), Buyer shall have the right to terminate this Agreement by giving Seller written notice within ten (10) calendar days after the expiration of the Title Commitment Cure Period, otherwise Buyer's right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived. Other:

None

7. **Inspections.** After the Effective Date, Buyer and Buyer's agents shall have the right to enter upon the Premises during reasonable business hours for the purposes of conducting such inspections of the Premises that Buyer deems appropriate; provided, however, that such inspections shall not interfere with the rights of the tenants in possession. Buyer shall indemnify, defend and hold Seller and Broker harmless from and against any damage to persons or property caused by Buyer or Buyer's agents in conducting such inspections. Buyer shall have the right to terminate this Agreement if the inspections are not acceptable to Buyer by giving Seller written notice within Forty Five (45) calendar days after the Effective Date, otherwise the right to terminate shall be deemed to have been waived.

Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson regarding any aspect of the Premises, or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller. Accordingly, Buyer agrees to accept the Premises "as is" and "with all faults", except as otherwise expressly provided in the documents specified in the preceding sentence. Other:

None

8. **Closing Adjustments.** The following adjustments shall be made between the parties by the close of business on the closing date, with Buyer receiving a credit or assuming responsibility, as the case may be, for amounts attributable to time periods following the closing date:

a. Prepaid rent;
b. Interest on any existing indebtedness assumed by Buyer;
c. Charges for any transferable service contracts assigned to Buyer described in Exhibit C;
d. Utility deposits;
e. Security deposits;
f. Additional Rent (as defined below).

If any tenant is late, delinquent or otherwise in default in the payment of rent on the closing date, Seller shall assign to Buyer the claim for and the right to collect the rent; Buyer shall pay such past due rent to Seller promptly upon receipt; but Buyer shall not be obligated to file suit to collect such rent and shall reassign the claim to Seller on demand. If any tenants are required to pay percentage rent, escalation charges for real estate taxes, operating expenses, cost-of-living adjustments or other charges of a similar nature ("Additional Rent"), and such amounts shall be allocated between the parties pursuant to the terms of the applicable leases. If any Additional Rent is collected by Buyer after closing which is attributable in whole or in part to any period prior to closing, Buyer shall promptly pay to Seller Seller's proportionate share of the Additional Rent. Other:

None

9 . **Property Taxes.** All property taxes first billed prior to the year of closing will be paid by Seller, without proration. All property taxes billed or to be billed in the year of closing will be paid as follows (choose one):

☐ No Proration:

☐ Buyer ☐ Seller shall pay the taxes billed in July.

☐ Buyer ☐ Seller shall pay the taxes billed in December.

☒ Calendar Year Proration. Combined per diem tax amount representing both the July bill and the December bill shall be calculated based on a 365 day year. Seller shall be responsible for the per diem total from January 1 to, but not including, the day of closing. Buyer shall be responsible for the difference between the total of the two tax bills and the Seller's share. If the amount of either tax bill is unknown on the day of closing, such amount shall be based on the prior years' tax bill.

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10. **Special Assessments (choose one):**
☒ Seller shall pay all special assessments which have become a lien on the Premises prior to the closing, whether due in installments or otherwise.
☐ Seller shall pay all special assessments which have become a lien on the Premises prior to the closing, provided, however, that in the event a special assessment is payable in installments, Seller shall only be responsible for those installments covering the years prior to the year of closing, and Buyer shall be responsible for all installments covering all years after the year of closing. Installments of special assessments covering the year of closing shall be prorated using the same method set forth in this Agreement for the proration of real estate taxes.
☐ Other:

11. **Conveyance.** Upon performance by Buyer of the closing obligations specified in this Agreement, Seller shall convey the marketable title to the Premises to Buyer by warranty deed or agree to convey marketable title by land contract or assignment, as required by this Agreement, including oil, gas and other mineral rights owned by Seller, if any, subject only to existing zoning ordinances, and the following matters of record: building and use restrictions, easements, oil and gas leases, and reservations, if any. As used herein, "marketable title" means marketable title within the meaning of the Michigan 40-Year Marketable Title Act (Mich. Comp. Laws §§ 565.101 et seq.).

The following paragraph applies only if the Premises include unplatted land:
Seller agrees to grant Buyer at closing the right to make (insert number) All legal division(s) under Section 108 (2), (3) and (4) of the Michigan Land Division Act. (if no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or Broker do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval, on or before Closing (date), of the proposed division to create the Real Estate. Other:

None

12. **Warranties of Buyer.** Except as otherwise provided or acknowledged in this Agreement, Buyer represents and warrants to Seller as follows:
    a. The performance of the obligations of Buyer under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Buyer.
    b. There is no litigation or proceeding pending, or to Buyer's knowledge threatened, against or involving Buyer, and Buyer does not know or have reason to know of any ground for any such litigation or proceeding, which could have an adverse impact on Buyer's ability to perform, or Seller's interests, under this Agreement.
    c. In entering into this Agreement, Buyer has not relied upon any written or verbal representations made by Seller or any representative of Seller, including any real estate salesperson, regarding the Premises or any aspect of this transaction, which are not expressly set forth in this Agreement.
    d. Other:
    None

13. **Warranties of Seller.** Except as otherwise provided or acknowledged in this Agreement, Seller represents and warrants to, and agrees with Buyer as follows:
    a. The performance of the obligations of Seller under this Agreement will not violate any contract, indenture, statute, ordinance, judicial or administrative order or judgment applicable to Seller or the Premises.
    b. There is no litigation or proceeding pending or to Seller's knowledge threatened against or involving Seller or the Premises, and Seller does not know or have reason to know of any ground for any such litigation or proceeding which could have an adverse impact on Seller's ability to perform under this Agreement or that could adversely affect Buyer's title or use of the Premises.
    c. Seller shall continue to operate the Premises in the ordinary course of business and maintain the Premises in a state of good condition and repair during the interim between the signing of this Agreement and the closing date.
    d. If a statement(s) of income and expense with respect to the operation of the Premises is (are) described in Exhibit A, such statement(s) is (are) accurate for the period(s) designated in the statement(s).
    e. The information concerning written leases and tenancies not arising out of written leases described in Exhibit B is accurate as of the Effective Date, and there are no leases or tenancies with respect to the Premises other than those described in Exhibit B (the "Leases"). The warranties in this paragraph do not apply to oil and gas leases, if any. Except as otherwise described in the documents that will be delivered pursuant to the index of Exhibits:
        (1) All of the Leases are in full force and effect, no party thereto is in material default thereunder, and none of them have been modified, amended, or extended beyond what will be delivered per Exhibit B; with respect to renewal or extension options, options to purchase the Premises, advance payments in excess of one month, common area maintenance and utility fees, and security deposits, these items are set forth in the written leases described in Exhibit B.
        (2) The rents set forth are being collected on a current basis and there are no arrearages;
        (3) No real estate brokerage commission will become owing in the event of any tenant's exercise of any existing option to renew the term of any lease or purchase of the Premises.
    f. If a schedule of service, maintenance, supply and management contracts ("Service Contracts") is described in Exhibit C, the Exhibit lists all the Service Contracts currently in effect with respect to the Premises.
    g. The Premises will be in compliance with any applicable smoke detector ordinances as of the closing date.
    h. With respect to underlying land contracts or mortgages, the sale will not accelerate indebtedness, increase interest rates, or impose penalties and sanctions.
    i. Seller is without personal knowledge as to the presence on the Premises of any toxic or hazardous substances or of any underground storage tanks.
    j. Other:
    Seller to provide Buyer all property related reports

14. **Damage to Premises.** If between the Effective Date and the closing date, all or any part of the Premises is damaged by fire or natural elements or other causes beyond Seller's control that cannot be repaired prior to the closing date, or any part of the Premises is taken pursuant to any power of eminent domain, Seller shall immediately notify Buyer or such occurrence, and either Seller or Buyer may terminate this Agreement by written notice to the other within fifteen (15) days after the date of damage or taking. If neither elects to terminate this Agreement, there shall be no reduction in the purchase price and, at closing, Seller shall assign to Buyer whatever rights Seller may be with respect to any insurance proceeds or eminent domain award.

15. **Closing.** The closing shall be held on or before TBD (date) and as promptly as practical after all necessary documents have been prepared. An additional period of TBD (___) days shall be allowed for closing to accommodate delays in title work or the correction of title defects and/or survey problems which can be readily correctable, delays in obtaining any required inspections, surveys or repairs, delays in completing Environmental Site Assessments, Baseline Environmental Assessment or Due Care Plan/Section 7a Compliance Analysis (if such assessments or plans were ordered in a timely manner), or if the terms of purchase require participation of a lender and the lender has issued a commitment consistent with the requirement but is unable to participate in the closing on or before the required date.

16. **Possession.** Seller shall tender to Buyer possession of the Premises upon completion of the closing, subject to all existing leases and rights of tenants in possession. Other:
TBD

17. **Seller's Closing Obligations.** At closing, Seller shall deliver the following to Buyer:
    a. The warranty deed, land contract or assignment of land contract required by this Agreement.
    b. A bill of sale for any Personal Property (described in Exhibit "D").
    c. A written assignment by Seller of Seller's interest in all leases and a transfer to Buyer of all security deposits, accompanied by the original or a true copy of each lease.
    d. An assignment of all Seller's rights under any Service Contracts described in Exhibit C which are assignable by their terms and which Buyer wishes to assume, together with an original or true copy of each Service Contract assigned.
    e. A notice to any tenants advising the tenants of the sale and directing that future payments be made to Buyer.
    f. An accounting of operating expenses including, but not limited to, CAM, taxes, insurance and Additional Rent, collected in advance or arrears, spent or not yet spent by Seller, showing an accurate allocation between the parties pursuant to the leases.
    g. Payment of the County and State real estate transfer tax.
    h. Any other documents required by this Agreement to be delivered by Seller.

18. **Buyer's Closing Obligations.** At closing, Buyer shall deliver to Seller the following:
    a. The cash portion of the purchase price specified in this Agreement shall be paid by cashier's check or other immediately available funds, as adjusted by the apportionments and assignments in accordance to this Agreement.
    b. A written assumption by Buyer of the obligations of Seller under the leases arising after closing, including an acknowledgement of the receipt of all security deposits.
    c. Any other documents required by this Agreement to be delivered by Buyer.

19. **1031 Tax Deferred Exchange.** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue code of 1986, as amended; provided, however, that in connection therewith, the non-requesting party shall not be required to (a) incur any additional costs or expenses; (b) take legal title to additional real property (i.e. the requesting party's "replacement property" or "relinquished property"); or (c) agree to delay the closing.

20. **Earnest Money.** Buyer gives Core Realty Partners, Broker, ten (10) days to obtain the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding agreement between Buyer and Seller.
Buyer shall deposit $ 10,000 with Transnation Title, Escrow Agent, [insert name of Broker, Title Company or other] ☐ with this offer or ☒ within Seven (7) days after acceptance of this offer, evidencing Buyer's good faith, to be held by the Escrow Agent and to apply to the purchase price or the down payment portion thereof where applicable. If this offer is not accepted, or the title is not marketable, or if the purchase is contingent upon conditions specified that cannot be met, this deposit shall be promptly refunded. If the Buyer defaults, all deposits made may be forfeited as liquidated damages at Seller's election, or alternatively, Seller may retain the deposits as part payment of the purchase price and pursue Seller's legal or equitable remedies against Buyer. If the sale is not closed according to its terms, the selling Broker may notify Buyer(s) and Seller(s) of Escrow Agent's intended disposition of earnest deposit, and all parties shall be deemed to have agreed to the disposition of the earnest money deposit unless Escrow Agent is notified of a court action pending concerning this sale or disposition of earnest money within thirty (30) days after notice to the parties.

21. **Disclosure of Price and Terms.** The purchase price and the terms of this sale may be disclosed by the Commercial Alliance of REALTORS® Multiple Listing Service (CARWM) in the ordinary conduct of its business. Deletion of this paragraph shall not be considered a counter offer that would require a counter acceptance.

22. **Credit Reports.** Buyer consents that, if not otherwise prohibited, the Broker(s) may give Seller information about the Buyer contained in a credit report that may be furnished to the Brokers(s) by a credit reporting agency.

23. **Advice of Counsel.** Buyer acknowledges that the Broker has recommended that the parties retain an attorney or attorneys to review the terms of this Agreement.

24. **Attorney's Fees.** In the event of litigation arising from the failure or alleged failure of either party to perform its obligations under this Agreement, the party prevailing in that litigation (including appeals of all levels) shall be entitled to collect its court costs and reasonable attorneys' fees incurred in connection with such litigation from the other party. The provisions of this Section shall survive Closing or termination of this Agreement.

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25. **Brokerage Fee.** Seller and/or Buyer agree(s) to pay the broker(s) involved in this transaction a brokerage fee as specified in any agency agreement or other written agreement between them. In the event no such agreement exists, ☐ Buyer ☐ Seller agrees to pay a brokerage fee of 0%________________________. This brokerage fee shall be paid in full promptly after it is earned, but not later than any applicable closing. Unless otherwise previously agreed, Buyer and/or Seller agree(s) that the brokerage fee may be shared by the recipient with any cooperating broker who participates in the sale, in such amount as the recipient decides, without further disclosure to or consent from Buyer and/or Seller. Seller and Buyer agree that the broker(s) involved in this transaction is an intended third party beneficiary that is entitled to enforce the obligation set forth herein to pay the brokerage fee. Other:

Seller acknowledges that if a commission is owed under a prior agreement, execution of this agreement will not eliminate the prior agreement.

26. **Environmental.**

A. **Notice to buyers and sellers (environmental risks).**

Whenever real property is acquired or occupied, the buyer incurs some degree of risk with regard to potential environmental contamination and/or protected natural resources on the property. Various federal, state, and local laws may impose liability upon the buyer for the remediation of the contamination even though the buyer did not cause it, or may restrict the buyer's ability to fully develop or utilize the property. Such risk can be minimized through the performance of environmental due diligence. Additionally, sellers are advised that they may have an obligation to provide certain environmental information and/or disclosures to prospective buyers. The failure to provide such information or disclosures may subject a seller to potential liability or result in the loss of certain liability protections.

No real estate brokers/salespersons in this transaction possess the expertise necessary to assess the nature or extent of these environmental risks or to determine the presence of environmental contamination or protected natural resources. The real estate brokers/salespersons involved in this transaction do not make independent investigations as to environmental contamination or protected natural resources with respect to any property, and they make no representations regarding the presence or absence, now or in the past, of environmental contamination. It is therefore prudent for each party to this transaction to seek legal and technical counsel from professionals experienced in environmental matters to provide an evaluation of the environmental risks associated with the transaction.

B. **Environmental reports and assessments.**

(1) Within ten____________ (10) calendar days of the Effective Date, Seller shall deliver to Buyer copies of any existing reports, data, plans, permits, notices and/or information in Seller's possession relating to environmental matters pertaining to the Premises ("Seller's Environmental Documents").

(2) Buyer shall have a period of Forty-Five_______ (45) calendar days after the Effective Date to evaluate environmental matters relating to the Premises ("Environmental Due Diligence Period"). Buyer and Buyer's agents shall have the right to enter upon the Premises during the Environmental Due Diligence Period during reasonable business hours for the purpose of conducting, at Buyer's expense, any environmental assessments of the Premises that Buyer deems appropriate, which assessments may include, but shall not be limited to, a Phase I Environmental Site Assessment, Transaction Screen, and/or evaluation of other regulated conditions or matters such as wetlands, asbestos containing materials, mold, or lead based paint ("Environmental Assessments"). The Environmental Assessments may not include the collection or analysis of samples of soil, groundwater, soil gas, indoor air, surface water, building components or any other environmental medium unless Buyer obtains prior written consent from Seller, which consent shall not be unreasonably withheld, delayed or conditioned. Buyer agrees that the Environmental Assessments shall not unreasonably interfere with the rights of Seller or any tenants in possession and Seller agrees to reasonably cooperate and to request that its tenants reasonably cooperate with the Environmental Assessments.

(3) Buyer shall have the right to terminate this Agreement if Seller's Environmental Documents or the Environmental Assessments are not acceptable to Buyer by delivering written notice to Seller prior to the expiration of the Environmental Due Diligence Period. If Buyer determines that any additional environmental due diligence activities (including, but not limited to, any additional environmental investigations, reports, approvals or permits) are warranted, then Buyer may provide Seller with a proposed amendment to this Agreement to extend the Environmental Due Diligence Period to allow Buyer to conduct such activities. If Buyer does not deliver a termination notice or proposed amendment to Seller prior to the expiration of the Environmental Due Diligence Period, then Buyer shall be deemed to have waived any objections to environmental matters relating to the Premises. If Buyer provides Seller with a proposed amendment to this Agreement, then Seller shall have a period of five__________ (5) calendar days to execute or negotiate mutually acceptable terms for such amendment, otherwise Buyer may, but shall not be obligated to, terminate this Agreement by delivering written notice to Seller with two (2) calendar days after Seller's deadline for executing or negotiating an amendment to this Agreement.

(4) If the Environmental Assessments cause any damage to the Premises, Buyer agrees to reasonably restore the Premises to the condition that existed prior to such damage. The restoration obligation does not require the remediation of any existing environmental condition. Buyer shall indemnify, defend and hold Seller and Broker harmless from and against any damage to persons or property caused by Buyer or Buyer's agents in conducting the Environmental Assessments.

c. **Nondisclosure.**

(1) If Seller's Environmental Documents or the Environmental Assessments identify the Land as a "facility" as defined in Part 201 of Michigan's Natural Resources and Environmental Protection Act, Public Act 451 of 1994, as amended ("NREPA") or a "site" as defined in Part 213 of NREPA, then Buyer may conduct a Baseline Environmental Assessment ("BEA") and/or a Due Care Plan ("DCP"); provided, however, that Buyer may not submit or otherwise disclose such BEA, DCP, or similar report (e.g., a response activity plan) to the Michigan Department of Environmental Quality prior to closing unless Buyer obtains prior written consent from Seller.

(2) If Buyer exercises its right to terminate this Agreement pursuant to subparagraph b(3) above, Buyer shall not disclose Seller's Environmental Documents or the Environmental Assessments to any third party unless required by mandatory disclosure pursuant to legal process. At Seller's request, Buyer shall provide copies of any Environmental Assessments to Seller.

d. Other: None

27. **Other Provisions:**

Buyer may assign its rights under this agreement to a realted entity.

Contingent upon municipal approval (s) of Buyer's intended use.

Buyer has the right to terminate this agreement for any reason during the due diligence period.

28. **Notices.** Any notice required or permitted to be given hereunder shall be deemed to have been properly given, if in writing and delivered to the parties at the addresses shown below, and shall be deemed received (a) upon delivery, if delivered in person or by facsimile transmission, with receipt thereof confirmed by printed facsimile acknowledgement, (b) one (1) business day after having been deposited for next day overnight delivery with a nationally recognized overnight courier service, (c) two (2) business days after having been deposited in any U.S. post office or mail depository and sent by certified mail, postage paid, return receipt requested, or (d) upon sending, if sent by email (with a confirmation copy sent the same day by overnight delivery).

29. **Additional Acts.** Buyer and Seller agree to execute and deliver such additional documents and to perform such additional acts after the closing as may become necessary to effectuate the transfers contemplated by this Agreement.

30. **Authority of the Parties.** Each of the undersigned individuals who have signed this Agreement on behalf of Seller and Buyer entities represent and warrant that he/she is authorized to sign this Agreement on behalf of such party and to bind such party to the requirements of this Agreement.

31. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the sale of the Premises. All contemporaneous or prior negotiations have been merged into this Agreement. This Agreement may be modified or amended only by written instrument signed by the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

For purposes of this Agreement, the phrase, "Effective Date of this Agreement" ("Effective Date") shall be the date upon which this Agreement is fully executed (as described below):

32. **Index of Exhibits.** Seller to furnish within the calendar days from effective date as specified below:

Not Applicable	Attached	Exhibit #	Subject	Exhibit to be furnished within ____ number of calendar days
	X	A	Income and expense with respect to the operation of the Premises	
	X	B	Written leases and any tenancies not arising out of written leases	
	X	C	Service Contracts	
	X	D	List of personal Property	

As to any "Seller to furnish" item(s) listed above, Buyer shall have the right to terminate this Agreement if any such item is not acceptable to Buyer by giving Seller written notice within five (5) calendar days after receipt of such item(s), otherwise the right to terminate this Agreement pursuant to this paragraph shall be deemed to have been waived.

GE 07/03/18 2:10PM EDT Buyer's Initials Seller's Initials

33. **By signing below, Buyer acknowledges having read this Agreement and authorizes delivery of this Agreement to Seller.**

Buyer: Core Development
(print name of individual or entity)

Signature: B. John Essex
dotloop verified
07/03/18 2:10PM EDT
RQHI-IQ3R-ZQEC-FQTO

Its: ______________________
(if Buyer is an entity)

Buyer's Address: ______________________

____

Buyer: ______________________
(print name of individual or entity)

Signature: ______________________

Its: ______________________
(if Buyer is an entity)

Bus. Phone: ____________ Fax: ____________

Email: ______________________

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34. **SELLER'S ACCEPTANCE** Date: ____________ Time: ____________

The above offer is hereby accepted ☐ as written ☐ as modified

By signing below, Seller acknowledges having read and authorizes delivery of this Agreement to Buyer. If this Agreement is signed by Seller without any modifications, the date Seller signs becomes the **Effective Date**. If this Agreement is signed by Seller subject to any modifications, Seller gives Broker above named until ____________ (time) ____________ (date) to obtain Buyer's written acceptance of Seller's counter offer.

Seller: ______________________
(print name of individual or entity)

Signature: ______________________

Its: ______________________
(if Seller is an entity)

Seller's Address: ______________________

____

Seller: ______________________
(print name of individual or entity)

Signature: ______________________

Its: ______________________
(if Seller is an entity)

Bus. Phone: ____________ Fax: ____________

Email: ______________________

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35. **BUYER'S RECEIPT OF ACCEPTANCE** Date: ____________ Time: ____________

Buyer acknowledges receipt of Seller's acceptance of Buyer's offer. If Seller's acceptance of Buyer's offer was subject to a counter offer, Buyer agrees to accept the terms of the counter offer:

☐ as written (with all other terms and conditions of Buyer's offer remaining unchanged); or ☐ modified as follows:

If Buyer is accepting a counter offer from Seller as written, the date Buyer signs below becomes the **Effective Date**. If Buyer is accepting Seller's counter offer subject to any modifications, Buyer gives Broker above named until ____________ (time________________________________(date) to obtain Seller's written acceptance of Buyer's counter offer.

Buyer: ______________________________ (print name of individual or entity)

Signature: ______________________________

Its: ______________________________ (if Buyer is an entity)

Buyer: ______________________________ (print name of individual or entity)

Signature: ______________________________

Its: ______________________________ (if Buyer is an entity)

36. **SELLER'S RECEIPT OF ACCEPTANCE** Date: ____________________, Time: ____________

Seller acknowledges receipt of a copy of Buyer's acceptance of Seller's counter offer (if Seller made a counter offer), or Seller agrees to accept the terms of Buyer's counter offer as written. If Seller is accepting the terms of Buyer's counter offer as written, then the date Seller signs below becomes the **Effective Date**.

Seller: ______________________________ (print name of individual or entity)

Signature: ______________________________

Its: ______________________________ (if Seller is an entity)

Seller: ______________________________ (print name of individual or entity)

Signature: ______________________________

Its: ______________________________ (if Seller is an entity)

AGENDA ITEM NO. _______________

CITY COMMISSION MEETING ___________________________

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: March 13, 2018

RE: 1000 West Western Ave Sale and Development Agreement

SUMMARY OF REQUEST:

The City Commission accepted a $249,000 purchase offer from Smith Equities in 2016. After a lengthy due diligence period, the parties entered into a letter of intent that would help guide the development of a purchase agreement. The purchase agreement is in final draft form, and the terms are agreeable to both Smith Equities and City Staff.

The Purchase Agreement outlines the purchase price as well as the development obligations of both parties. The City has a number of obligations in development agreement, including the relocation of infrastructure – such as the bike path and the roadway to the Hartshorn Launch Ramp – and the implementation of improvements at the marina's facilities. The City's costs associated with this infrastructure will be recovered as part of a Brownfield Reimbursement Plan. Additionally, the marina amenity improvements will result in increased revenue from both the new condominium association and the marina slip holders. It is anticipated that the initial phase of the development will result in approximately $170,000 in new property tax revenue annually, which will be captured as part of the Brownfield Plan and used to reimburse the City's expenses. Additional phases of the development will likely result in significantly more property tax revenue. It is also anticipated that the initial phase of the development will result in $40,000-$60,000 in new local Income Tax revenues.

The proceeds from the initial land sale will benefit the City's Public Improvement Fund.

FINANCIAL IMPACT:

$250,000 minus closing costs – deposited to the City's Public Improvement Fund

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To authorize the city manager to enter into the sale and development agreement with Harbor West, LLC, consistent with the terms of the Letter of Intent dated March 2018.

COMMITTEE RECOMMENDATION:

FIRST AMENDED AND RESTATED REAL ESTATE SALE AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDED AND RESTATED REAL ESTATE SALE AND DEVELOPMENT AGREEMENT ("**Agreement**") has been made as of the Effective Date (defined below), by the CITY OF MUSKEGON, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 ("**Seller**"), and HARBOR WEST, LLC, a Michigan limited liability company, of 108 South University, Suite 6, Mt. Pleasant, Michigan 48858 ("**Buyer**").

Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, on the terms and subject to the conditions set forth in this Agreement, that parcel of real estate commonly known as 1000 W. Western Avenue (Parcel 4) as depicted on **Exhibit A-1**, attached hereto, and legally described on**, Exhibit A-2**, adjacent to the Hartshorn Marina (the "**Marina**"), together with all improvements, fixtures, easements, division rights, hereditaments and appurtenances associated with that real estate (collectively, "**Property**").

1. **Project**. Buyer is proposing to construct approximately 23+/- residential condominium units and associated site improvements on the Property (the "**Project**"). As part of Buyer undertaking the Project, Seller agrees to provide Buyer with up to Six Hundred Thousand and 00/100 US Dollars ($600,000.00) in order for Buyer to complete Buyer's brownfield eligible activities (as defined by Act 381 of 1996, as amended) on the Property ("**Brownfield Eligible Costs**"). Seller shall pay on behalf of Buyer the Buyer's Brownfield Eligible Costs as Buyer incurs such costs within thirty (30) days of receipt of Buyer's invoice for the same. Seller shall have first priority for reimbursement to recoup the Brownfield Eligible Costs paid by Seller pursuant to and in accordance with a brownfield plan that will be adopted for the Property. Buyer may incur additional brownfield reimbursable eligible costs in excess of the Brownfield Eligible Costs (the "**Other Brownfield Costs**"). Buyer's Other Brownfield Costs will be included in the brownfield plan for the Property/Project and will be reimbursable to Buyer following reimbursement of the Brownfield Eligible Costs to Seller from tax increment revenues generated from the Project. Buyer shall be responsible for any costs related to the Project that are not Brownfield Eligible Costs or Other Brownfield Costs except for the Marina Improvements defined in Paragraph 2 or the costs described in Paragraph 3.

2. **Marina Improvements**. In conjunction with the Project, Seller agrees to complete various public improvements to the Marina that may include but are not limited to docks, clubhouse, pool and utility improvements (the "**Marina Improvements**"). Buyer and Seller shall coordinate on the overall development of the Marina Improvements, and Buyer shall be permitted to review and approve the plans for the Marina Improvements. Buyer and Seller agree that the Marina Improvements shall be considered a Marina amenity and limited in use by the Marina slip lessees and the Project unit owners. Such exclusive use shall be set forth in Marina slip leases and in the Project condominium documents. The Project's condominium association shall participate in the ongoing maintenance of the Marina Improvements by agreeing to pay a portion of such maintenance costs on a semi-annual basis. The details regarding the association's portion of such costs and the types of maintenance costs that will be

covered shall be set forth in a Marina Maintenance Agreement to be negotiated in good faith by Seller and Buyer prior to the Closing Date.

3. **Relocation of Roads and Utilities**. Seller, at its sole cost, and in coordination with Buyer, shall, following closing, be responsible for the vacation, abandonment, or relocation, as the case may be, of any existing roadways, utilities, bike paths, fence, or other improvements required to be relocated as part of the Project or the Marina Improvements. Buyer and Seller agree to pursue completion of the obligations listed in Paragraphs 1, 2 and 3 in accordance with the schedule attached as Exhibit F to this Agreement, unless otherwise modified by the parties. Buyer's and Seller's obligations outlined in Paragraphs 1, 2 and 3 shall survive the closing of this Agreement.

4. **Purchase Price**. The purchase price for the Property shall be Two Hundred Forty-Nine Thousand and 00/100 U.S. Dollars ($249,000.00) ("**Purchase Price**"), payable at Closing (as defined below) by bank money order, cashier's check, or wire transfer of immediately available funds.

5. **Deposit; Default**.

(a) Seller and Buyer acknowledge that following Buyer's execution of the original Real Estate and Development Agreement, dated April 23, 2018 ("**Original Agreement**"), Buyer deposited the sum of Five Thousand and 00/100 U.S. Dollars ($5,000.00) ("**Deposit**") in escrow with the Title Company (defined below) as evidence of good faith and to bind this Agreement. If the purchase and sale contemplated by this Offer ("**Purchase**") is closed, the Deposit shall be applied to the Purchase Price at closing. If Buyer terminates this Agreement pursuant to any termination right granted by this Agreement, the Deposit shall be promptly returned to Buyer.

(b) If Buyer defaults in Buyer's obligations under this Agreement so that the Purchase is not closed, then as Seller's sole remedy Seller may terminate this Agreement by notice to Buyer, the Deposit shall be paid to Seller as liquidated damages, and neither Seller nor Buyer shall have any further liability to the other under this Agreement.

(c) If Seller defaults in Seller's obligations under this Agreement so that the Purchase is not closed, then Buyer may terminate this Agreement by notice to Seller, in which case the Deposit shall be promptly returned to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement. Alternatively, Buyer may pursue any other right or remedy available at law or in equity, including, without limitation, injunctive relief and specific performance of this Agreement.

6. **Title; Survey**.

(a) Seller agrees to convey good and marketable title to the Property to Buyer by covenant deed ("**Covenant Deed**"). As evidence of Seller's title, within twenty (20) days after the Effective Date, Seller shall at Seller's expense furnish Buyer with a commitment ("**Title Commitment**") from Transnation Title Agency (the "**Title Company**") to issue an owner's title insurance policy insuring Buyer in the amount of the Purchase Price, without the standard printed exceptions, and which shall be in the latest form approved by the American Land Title Association ("**ALTA**"). The Title Commitment must show good and marketable title to be in Seller's name, subject only to beneficial easements and restrictions of record that are acceptable to Buyer in its sole discretion and the requirements to be satisfied under the Title Commitment and shall disclose no other easements, restrictions or encumbrances whatsoever.

(b) Buyer shall obtain, at Buyer's expense, a current staked survey of the Property in a form acceptable to Buyer and Buyer's lender, if any, including, without limitation the form of certification ("**Survey**"). Buyer and Seller acknowledge and agree that the legal description for the Property shall be that as set forth in the Title Commitment to be obtained by Seller, and furnished to Buyer under this Agreement, or the Survey obtained by Buyer. In the event of a conflict between the legal description in the Title Commitment and the Survey obtained by Buyer, the legal description contained in the Survey shall control.

(c) Buyer shall notify Seller prior to the expiration of the Inspection Period (defined below) if the Title Commitment discloses any exceptions not permitted by this Agreement or if the Survey shows any deviation from apparent boundaries or represented acreage, violation of zoning ordinances, or building and use restrictions, flood hazard area, encroachment, or condition that poses a problem for Buyer's lender, if any, or that, in Buyer's judgment, could interfere with Buyer's intended use of the Property (individually and collectively, a "**Defect**"). Seller shall remove each Defect at Seller's expense prior to the closing. In addition, Seller shall satisfy the requirements set forth in the Title Commitment on or before the closing date. If Seller fails or refuses to remove any Defect, then Buyer may: (i) proceed to closing, waiving the Defect at issue; (ii) terminate this Agreement by a written notice to Seller, in which case the Deposit shall be promptly returned to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement; or (iii) proceed to closing and cure any Defect that is capable of being cured or satisfied by the payment of a sum certain, using sale proceeds otherwise payable to Seller.

7. **Inspections**.

(a) Buyer and its agents, consultants, and designees ("**Buyer's Agents**") may from time to time inspect the Property prior to the closing, and may enter the Property to perform the inspections referenced in this Agreement. Promptly upon Seller's execution of this Agreement, Seller shall provide to Buyer, or make available for review by Buyer and/or Buyer's agents, copies of the following documents to the extent that they are in Seller's possession or control ("**Seller's Documents**"): (i) all building permits, wetlands, and fill permits, zoning variances and approvals, and environmental reports with respect to the Property; (ii) all surveys of the Property; (iii) all site, "as-built", architectural, and engineering plans and specifications for any existing and planned improvements to the Property; (iv) any notices with respect to the Property received from a governmental agency; and (v) all maintenance and other contracts affecting the Property ("**Contracts**"). For purposes of this Agreement, documents in Seller's "possession and control" shall be deemed to be documents found by Seller following reasonable investigation.

(b) Without limiting the generality of the foregoing, Buyer and Buyer's Agents shall have the right to conduct an environmental assessment of the Property in one or more phases, including the procurement and analysis of samples of soil, groundwater, surface water, indoor air, or any other environmental medium, and any building component or other material located at the Property. The cost of the environmental assessment shall be borne by Seller. Buyer and Seller agree to cooperate in good faith to maximize any available development incentives, including without limitation, so-called “Brownfield” incentives with respect to the Property. Seller shall provide access and information to, and otherwise cooperate with, Buyer and Buyer's Agents in the environmental assessment. Buyer shall have the right to interview employees and representatives of Seller who have or may have knowledge of conditions and events relevant to the operating history or environmental condition of the Property. Prior to conducting a Phase II, Buyer shall provide Seller a written work plan for approval that describes the proposed scope and content of the Phase II. Seller shall have seven days from receipt of the proposed Phase II scope of work to make any objections. If Seller does not make any objections, the proposed Phase II work plan shall be deemed approved. Buyer shall proceed with a Phase II if the parties agree upon a mutually-acceptable work plan. If the parties cannot agree upon a Phase II work plan within 10 days after Seller’s receipt of the work plan, Buyer, in its sole discretion, may terminate this Agreement and the Deposit shall be returned to Buyer. Any Phase II work performed on the Property shall only be done in accordance with an approved work plan. If the Property is a "facility" within the meaning of Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq. ("**Part 201**"), Buyer may, at Buyer's expense, prepare and submit to the Michigan Department Environmental Quality ("**MDEQ**") a "baseline environmental assessment, pursuant to Section 26 of Part 201, MCL 324.20126. Buyer may also, at Buyer's expense, prepare a plan ("**Due Care Plan**") to meet due care obligations at the Property imposed under MCL 324.20107a. Buyer may, at its option and Buyer's expense, submit the Due Care Plan to MDEQ for approval as a no further action report under Section 14d of Part 201m MCL 324.20114d. Except to the extent arising solely from the negligence, gross negligence or willful misconduct of Seller, Buyer expressly agrees to defend, indemnify and hold Seller harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys’ fees) or penalties arising out of Buyer’s exercise of its right to conduct the inspections under this paragraph 7.

8. **Seller's Representations and Warranties**. Seller represents and warrants to Buyer, which representations and warranties shall be true to the closing date, as follows:

(a) There are no pending or threatened condemnation proceedings against the whole or any part of the Property;

(b) There are no claims, litigation, proceedings, inquiries, investigations, or disputes pending or threatened against or relating to the Property except for the Remedial Action Plan dated November 14, 2000 ("**RAP**"), which has been delivered to Buyer;

(c) To the best of Seller’s knowledge, Seller has at all times operated the Property in compliance with all applicable laws, ordinances, orders, codes, rules, regulations, building and use restrictions, and other legal requirements, including, without limitation, Seller's timely application for, possession of, and compliance with all applicable environmental permits (collectively, "**Applicable Law**"), and the Property is free and clear of all violations of Applicable Law;

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

(e) There are no agreements, contracts, or leases, written or oral, which affect the Property in any manner other than this Agreement and the Contracts, none of which are in default and any agreements disclosed by the Title Commitment;

(f) To the best of Seller's knowledge, all buildings and fixtures that constitute a portion of the Property are in good condition and working order, reasonable wear and tear excepted, and contain no defects which may impair Buyer's intended use of them;

(g) There is no pending or proposed special assessment affecting or which may affect the whole or any part of the Property;

(h) Seller has and can deliver to Buyer good and marketable title to the Property, subject only to the exceptions permitted by this Agreement, and the Property have legal and physical access from a publicly dedicated and improved right-of-way; and

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

Seller shall hold Buyer harmless, indemnify, and at Buyer's option, defend Buyer, from and against any loss, including, without limitation, reasonable attorney fees, incurred by reason of Seller's breach of any of the foregoing representations and warranties. For purposes of this Agreement, the “best of Seller’s knowledge” shall refer only to the actual present knowledge of City of Muskegon, following a reasonable investigation.

9. **Buyer’s Representations and Warranties**. Buyer represents and warrants to Seller, which representations and warranties shall be true to the closing date, as follows:

(a) Buyer is a Michigan limited liability company duly organized, validly existing and in good standing under the laws of the State of Michigan.

(b) Buyer has the power and authority to enter into and perform Buyer’s obligations under this agreement.

(c) Buyer is aware that the Property is a “facility” as defined in Part 201 and that the Property is encumbered by certain Restrictive Covenants set forth in a warranty deed dated November 16, 1999 and recorded at Liber 2312, Page 958, Muskegon County Records.

10. **Contingencies**. The obligation of Buyer to close the Purchase shall be contingent upon:

(a) Buyer's reasonable satisfaction with the results of its investigation of the compliance of the Property with applicable laws, ordinances and regulations, to be performed at Buyer's discretion and expense within sixty (60) days after the Effective Date, except that Buyer may unilaterally extend this date by an additional thirty (30) days as may be required to complete its environmental investigation of the Property (the "**Inspection Period**");

(b) Buyer's satisfaction, in its sole discretion, with the results of all inspections of the Property that Buyer desires, to be performed at Buyer's discretion and expense within the Inspection Period;

(c) All representations and warranties of Seller set forth in this Agreement being true as of the closing date;

(d) Seller having timely performed and complied in all respects with all covenants, obligations, and agreements to be performed or complied with by Seller under this Agreement;

(e) Seller's approval of a brownfield plan and development and reimbursement agreement for the Property/Project with eligible activities, as defined by Act 381 of 1996, as amended, of at least an amount equal to the Brownfield Eligible Costs and Other Brownfield Costs. The brownfield plan shall include Buyer's and Seller's proposed eligible activities for redevelopment of the Property. The brownfield plan and development and reimbursement agreement shall also include Seller's agreement to pay on behalf of Buyer an amount up to the Brownfield Eligible Costs for Buyer's site work on the Property, Buyer's Other Brownfield Costs, any additional eligible brownfield costs, as well as the terms and priority of reimbursement. Seller shall have first reimbursement priority of the costs incurred for the Brownfield Eligible Costs. Following reimbursement to Seller for the Brownfield Eligible Costs, Buyer shall be reimbursed for Other Brownfield Costs incurred at the Project. Any remaining costs included in the brownfield plan and incurred by parties will be split on a prorata basis for reimbursement.

(f) Buyer's satisfaction, in its sole discretion, with its review of Seller's Documents and the condition, permitted use and development prospects for the Property, including, without limitation: (i) mutual agreement with Seller on the vacation/abandonment/relocation of any existing public roadways, utilities, bike paths, railways or other improvements required to be relocated, all of which shall be conducted at Seller's expense; (ii) mutual agreement with Seller on the Marina Improvements and the Marina Maintenance Agreement. Buyer shall perform such review, at its expense, within the Inspection Period. If Buyer is not satisfied with such review and inspections, then, as Buyer's sole remedy, Buyer may terminate this Agreement by a written notice to Seller, in which case the Deposit shall be promptly returned to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement; and

(g) Buyer's satisfaction, in its sole discretion, with the environmental condition of the Property.

Buyer shall promptly commence and proceed diligently and in a reasonable manner to attempt to satisfy each of the contingencies set forth above, at Buyer's expense. Seller agrees to cooperate in such endeavor. If Buyer is unable to satisfy one or more of the contingencies, and is not willing to waive the contingency(ies), then Buyer may terminate this Agreement by a written notice to Seller, in which case the Deposit shall be promptly returned to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement.

11. **Closing**.

(a) The closing shall take place as soon as reasonably possible following the satisfaction of the conditions and contingencies set forth in this Agreement, but no later than August 31, 2018, or such later date as is mutually agreed upon by Seller and Buyer (the "**Closing Date**"). Within these limitations, the closing shall take place at such time and place and on such date as shall be specified by Buyer on at least one week's notice to Seller, or in the absence of such notice, at 10 a.m. on the last day permitted for closing, at the offices of Buyer's attorney.

(b) At closing, Seller shall execute and deliver the following:

(i) The Covenant Deed, in recordable form;

(ii) A real estate transfer tax valuation affidavit;

(iii) A closing statement setting forth the Purchase Price and closing adjustments;

(iv) Affidavit(s) in the form prescribed by the Title Company for the removal of its standard printed exceptions;

(v) A corporate resolution or other evidence of authorization of the Purchase acceptable to the title company;

(vi) A certificate of nonforeign status;

(vii) An approved form of lease for Buyer’s lease of boat slips in the Marina, attached as **Exhibit B;**

(viii) A memorandum of Buyer’s right of first refusal in the form set forth on **Exhibit C**, setting forth Buyer’s right to purchase or operate the Marina property adjacent to the Property, as generally depicted on **Exhibit A-3**. Buyer shall be permitted to record the memorandum.

(ix) A memorandum of Buyer’s right of first refusal in the form set forth on **Exhibit D**, establishing Buyer’s right to annually lease up to twenty-three (23) boat slips at the Marina adjacent to the Property pursuant to Section 16 of this Agreement. Buyer shall be permitted to record the memorandum.

(x) A restrictive covenant in the form of **Exhibit E** that prohibits construction of any structures in the charter park area between the Marina and the Property that would obstruct sightline views of from the Project.

(xi) A waiver of commercial real estate broker's lien executed by Broker (as defined below) in a form prescribed by the Title Company.

(xii) Actual physical possession of the Property, free of all tenants or other occupants. Seller shall deliver possession of the Property to Buyer in good condition, and in at least as good a condition as on the date of this Agreement, reasonable wear and tear excepted. Seller shall continue to maintain any buildings, fixtures, lawn and other components of the Property in their current condition until the closing.

(xiii) An ALTA owner's title insurance policy which shall insure Buyer's title as required by Paragraph 3 above; and

(xiv) Any other documents reasonably necessary or legally required to evidence the Purchase.

(c) At closing, Buyer shall execute and/or deliver the following:

(i) The Purchase Price, as adjusted by prorations and other charges under this Agreement;

(ii) A closing statement setting forth the Purchase Price and closing adjustments; and

(iii) Any other documents reasonably necessary or legally required to evidence the Purchase.

(d) At closing, Seller shall pay all recording and filing costs in connection with curing its title to the Property, the transfer taxes for the Covenant Deed and the title insurance premium for Buyer's owner's policy of title insurance. Buyer shall pay the recording fee for the Covenant Deed. Seller and Buyer shall each pay one-half of any closing fee charged by the title company conducting the closing.

12. **Condition of Property.** No implied warranties of habitability, quality, condition, fitness for a particular purpose, or any other implied warranties shall operate between Seller and Buyer, and Buyer expressly waives any and all such implied warranties. Buyer understands and agrees that the Property are taken "**AS IS**" subject only to the representations and warranties set forth in this Agreement. Buyer represents that by closing on the purchase of the Property, Buyer will be purchasing the Property as a result of its inspection and investigation of the Property and that Buyer is satisfied with the condition of the land and the improvements thereon. Buyer

further represents and warrants that it is not purchasing the Property based on any representations made by or on behalf of Seller except as specifically set forth in this Agreement.

13. **Taxes and Assessments**. All real estate and personal property taxes and special assessments with respect to the Property, whether or not payable in installments or deferrable without penalty or interest to a later date, that first become due and payable (or in the case of special assessments, a lien upon the Property) on or before the Closing date, or which are assessed retroactively for the period of time prior to the Closing Date, shall be paid by Seller prorated as provided below. Buyer shall be responsible for all other subsequent taxes and assessments with respect to the Property. Real estate and personal property taxes that first became or will become due and payable during the year of the closing shall be prorated on a calendar year basis.

14. **Real Estate Brokers**. Seller and Buyer each agrees and represents to the other that no broker is involved in the Purchase who is entitled to a commission, other than Core Realty Partners LLC, and its listing member, Troy Wasserman ("**Broker**"). Seller shall be solely responsible for paying the commission owing to Broker pursuant to a separate agreement between Seller and Broker. If another broker makes a claim for remuneration in connection with the Purchase, Seller and Buyer each shall indemnify and hold harmless the other from any amount that the other may be required to pay to a broker that the other did not retain, including, without limitation, reasonable attorney fees expended to defend against such claim.

15. **Condemnation; Fire; Other Casualty**. Seller shall promptly notify Buyer of any impending or actual condemnation proceedings against the whole or any part of the Property of which Seller has actual notice or any fire or other casualty to the Property. If any portion of the Property is threatened to be taken or is taken as a result of condemnation proceedings or is damaged as a result of fire or other casualty prior to the closing, Buyer shall have the right:

(a) To terminate this Agreement by a written notice to Seller within ten (10) days after receipt of notice of such proceedings or damage, in which case the Deposit shall be promptly returned to Buyer, and neither Seller nor Buyer shall have any further liability to the other under this Agreement; or

(b) To proceed to closing as provided in this Agreement, agreeing to take the Property in its then-current condition, in which case Buyer will be entitled to receive all of the condemnation or insurance proceeds payable as a result of such condemnation or such damage, which Seller will assign to Buyer at closing pursuant to an assignment that is reasonably acceptable to Buyer.

16. **Marina Right of First Refusal**. Buyer and Seller agree that as part of the Purchase contemplated under this Agreement, Buyer shall have a right of first refusal to purchase or operate the Marina as shown on **Exhibit A-3**, together with all right, title and interest to the same and all associated easements and other interests benefitting the Marina should Seller choose to cease its current operational duties or sell the Marina (this "**ROFR**") on the following terms and conditions, and Buyer shall be permitted to record a memorandum of this ROFR:

(a) **Exercise of Right of First Refusal.** If at any time (i) the Marina or the operational responsibilities thereof are ever to be (or intended by Seller to be) sold, assigned, leased, subleased or transferred in any manner, or (ii) Seller receives a bona fide third party offer (which may consist of a letter of intent or term sheet containing only essential agreed terms, an offer, a purchase agreement, lease agreement, management agreement or anything else constituting an offer) to sell the Marina or transfer the operational responsibilities thereof which Seller desires to accept (an "**Offer**"), then Seller shall provide to Buyer a written notice of the detailed facts of the proposed sale, assignment, transfer or Offer, with a copy of any such Offer or similar document setting forth the terms of sale, assignment, or transfer. Buyer shall have sixty (60) days from its receipt of such written notice and Offer from Seller to elect to purchase or operate the Marina on the same terms and conditions as in the Offer, or if there is no Offer to purchase the Marina, to elect to purchase the Marina on the following terms. If there is no Offer to purchase the Marina, then the purchase price for the Marina shall be an amount equal to the appraised value as determined by an appraiser agreeable to both parties, and the other terms and conditions shall be as set forth below. If, following proper notice from Seller, Buyer fails to timely elect as provided above, then Seller may proceed to sell the Marina or transfer the Marina operations in accordance with the Offer but if such sale is not closed with the party making the Offer, then Buyer's rights hereunder remain in effect for any subsequent Offer.

(b) **ROFR Price for Marina Purchase**. If there is no Offer to purchase the Marina, the purchase price shall be payable as follows:

(i) Within five (5) business days after the exercise of the ROFR to purchase the Marina, Buyer shall deposit the sum of Five Thousand Dollars ($5,000) (the "**Deposit**") payable to a title company acceptable to Buyer and Seller, as escrow agent. The Deposit shall be deposited in escrow in an interest bearing account.

(ii) On the ROFR to purchase the Marina Closing Date (as hereinafter defined), Buyer shall pay to Seller such additional sum so that the Deposit plus such additional sum equals the purchase price set forth above.

(c) **Closing**. If the closing date is not specifically set forth in the Offer, the closing shall occur on or before one hundred twenty (120) days following exercise of the ROFR by Buyer, such date being the "**ROFR Closing Date**" subject to extension by mutual agreement. In the event the ROFR Closing Date falls on a Saturday, Sunday or legal holiday, the ROFR Closing Date shall be automatically extended to the end of the next following business day.

(d) **Title for Marina Purchase**. Notwithstanding the terms of any Offer to purchase the Marina, the following terms regarding title shall apply. At closing, Seller shall convey good, marketable title to the Marina to Buyer by covenant deed, subject only to the lien of taxes, which are not yet due and payable, and other encumbrances, which are approved by Buyer (altogether "**Permitted Exceptions**"). Seller, at its expense, shall furnish Buyer at closing with an extended ALTA Owner's Policy of Title Insurance, without standard exceptions in the amount of the purchase price, insuring Buyer's interest in the Marina, subject only to the Permitted Exceptions ("**Policy**").

(e) No later than twenty (20) days after the exercise of the ROFR by Buyer for the purchase of the Marina, Seller shall obtain and provide Buyer with a copy of a title commitment for the Policy on the Marina, together with copies of all exceptions of record referenced therein. Buyer shall notify Seller no later than ten (10) days prior to the ROFR Closing Date for the purchase of the Marina, in writing, of Buyer's disapproval of any exceptions shown on the title commitment or survey other than the Permitted Exceptions. If Buyer shall not have notified Seller of such disapproval within the aforementioned time period, the title commitment and exceptions to title set forth thereon shall be deemed approved. In the event of any such disapproval, Seller shall have until the ROFR Closing Date to purchase the Marina to eliminate such disapproved exceptions from the survey or from the policy of title insurance to be issued to Buyer and obtain all required covenant or easement holder approvals/estoppels and notices under applicable law, title requirements, or agreements. If such exceptions are not eliminated by the ROFR Closing Date to purchase the Marina, Buyer may: (i) terminate its agreement to purchase the Marina with respect to the exercise of the ROFR and the ROFR Deposit shall be returned to Buyer, (ii) may set off from the purchase price the cost of cure or insurance over the exception, or (iii) may proceed to closing and accept the Marina with such exceptions.

(f) **Prorations and Expenses**. Notwithstanding the terms of any Offer to purchase the Marina, at closing property taxes shall be prorated between Buyer and Seller on a calendar year basis. Seller shall pay the cost of any transfer tax and shall pay for any documentation and recording fees or other expenses related to cure or discharge of any title exceptions, mortgage, loan, or financing documents filed as to the Marina, and for preparation of and recording of any needed plat amendments, land divisions, and covenants, conditions and restrictions per title objections or requirements, and obtaining required municipal approvals, if any. Buyer and Seller shall each pay one-half of any title company fees. All other expenses relating to closing on the purchase of the Marina or transfer of operations (excepting the title insurance premium and any title company documentation fee for the purchase of the Marina, which shall be paid by Seller) shall be divided between Buyer and Seller in accordance with the Offer, or if there is no Offer, then in accordance with the real estate customs in Muskegon County. If Buyer is purchasing the Marina, Buyer shall receive credit on the purchase price for any interest accumulated upon the ROFR Deposit.

(g) **Possession**. Notwithstanding the terms of any Offer, possession of the Marina or Marina operations shall be delivered to Buyer on the ROFR Closing Date, free of any tenancies, licenses or rights of possession (other than Buyer's) with title in the condition as required in subsection (d) if Buyer is purchasing the Marina.

(h) **Remedies**. If Buyer defaults in Buyer's obligations so that the ROFR purchase or transfer is not closed, then as Seller's sole remedy Seller may retain the ROFR Deposit as liquidated damages in the event of the purchase of the Marina or proceed with the Offer in the event of a transfer or operation of the Marina, and neither Seller nor Buyer shall have any further liability to the other related to the ROFR. If Seller defaults in Seller's obligations so that the ROFR purchase or transfer is not closed, then the Deposit shall be promptly returned to Buyer in the event of a purchase of the Marina, and neither Seller nor Buyer shall have any further liability to the other under this Agreement, or Buyer may pursue any other right or remedy available at law or in equity, including, without limitation, injunctive relief and specific performance related to transfer of the Marina operations.

(i) **Survival**. This ROFR shall survive the closing of this Agreement.

17. **Marina Slips Right of First Refusal.** Seller covenants and agrees that Buyer shall annually have a right of first refusal for the lease of up to twenty-three (23) boat slips in the Marina. Buyer shall exercise its right of first refusal for some or all of the twenty-three (23) slips by November 1 of each year for the following season. If Buyer fails to exercise such right by November 1, or, alternatively, only exercises such right with respect to a portion of the twenty-three (23) slips, then Seller shall have the right thereafter to lease the remaining slips to other parties. Buyer shall be permitted to record a memorandum of this right of first refusal, a form of which is attached as **Exhibit D.** This right of first refusal shall survive the closing of this Agreement.

18. **Miscellaneous**.

(a) This Agreement shall bind and benefit Seller, Buyer and their respective successors, assigns, heirs, executors, and personal representatives. Buyer may freely assign this Agreement to an entity of which the equity owners of Buyer own a majority of the equity ownership, but Buyer shall not be released from liability under this Agreement. Buyer shall promptly notify Seller of any such assignment.

(b) Seller and Buyer recognize that the law firm of Warner Norcross & Judd LLP ("**Legal Counsel**") is representing Buyer in the Purchase. Seller has either hired independent legal counsel or knowingly elected not to hire independent counsel to represent Seller in the Purchase. In such capacity, Legal Counsel has prepared this Agreement and may be called upon to prepare other documents necessary to close the Purchase. No ambiguity or inconsistency in this Agreement shall be construed against Buyer solely because Legal Counsel prepared this Agreement.

(c) All notices under this Agreement shall be in writing and shall be delivered to Seller and Buyer at their respective addresses set forth above, or at another address designated by like notice to one another. Personal delivery, facsimile transmission, or mailing of a notice by certified mail, postage prepaid, or delivery by recognized overnight service shall be sufficient notice. Notice shall be effective upon receipt, if personally delivered or faxed, upon mailing, if mailed, or upon deposit with the overnight delivery service.

(d) The "**Effective Date**" of this Agreement shall be the date of the last signature on this Agreement. Time is of the essence of this Agreement, except that Buyer may waive this provision for the purpose of meeting conditions and contingencies under this Agreement. If the date for closing, for the delivery of a document, or for giving of a notice, falls on a Saturday, Sunday or bank holiday, then it shall be automatically deferred to the next day that is not a Saturday, Sunday or bank holiday.

(e) This Agreement may not be amended, altered or modified except by means of a writing signed by the person against whom enforcement of any waiver, change, modification, or discharge is sought.

(f) The representations, warranties and agreements set forth in this Agreement shall survive the closing of the Purchase for a period of one year.

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

(h) This Agreement and the exhibits to this Agreement contain all of the representations and statements by Seller and Buyer to one another and express the entire understanding between Seller and Buyer with respect to the Purchase. All prior and contemporaneous communications concerning the Purchase are merged in and replaced by this Agreement.

(i) This Agreement amends, restates and supersedes the Original Agreement, which is hereby terminated and neither Buyer nor Seller has any further liability under the Original Agreement.

Seller and Buyer have signed or caused this First Amended and Restated Real Estate Sale and Development Agreement to be signed by their duly authorized representatives as of the date(s) set forth opposite their signatures. The date of the last signature shall be the "**Effective Date**".

THE CITY OF MUSKEGON, a Michigan municipal corporation

Dated: ____________________ ____________________

By: ____________________

Its: ____________________

Seller

HARBOR WEST, LLC, a Michigan limited liability company

Dated: 8/3/2018 ____________________

By: ____________________

Its: Member

Buyer

EXHIBIT A-1

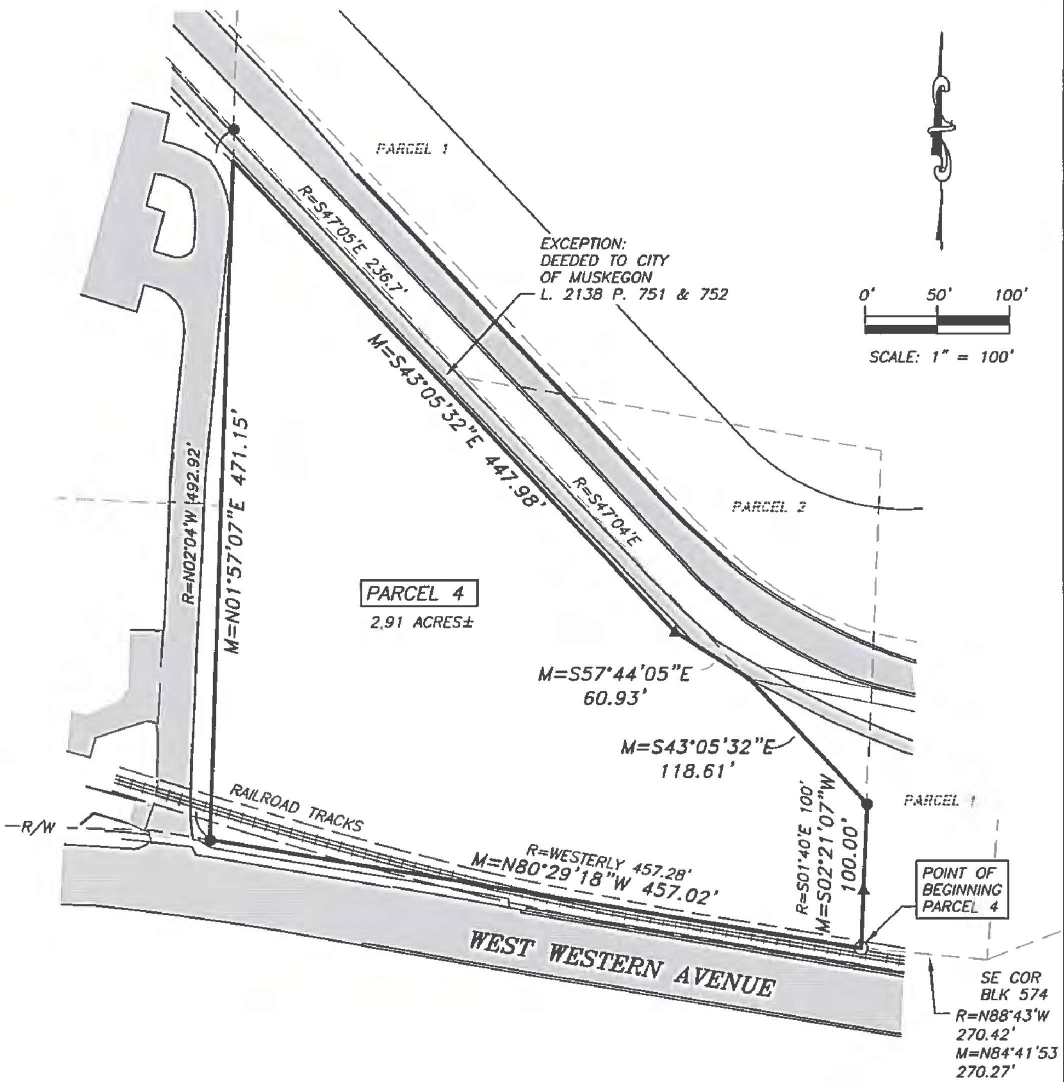
Property Map

WESTSHORE CONSULTING
Engineers ▪ Scientists ▪ Surveyors ▪ Planners

PURCHASE AGREEMENT EXHIBIT

FOR: HARBOR WEST, LLC

PARCEL 4:
THOSE PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 88°43' WEST 270.42 FEET (M=NORTH 84°41'53" WEST 270.27 FEET) TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE FOR A POINT OF BEGINNING;
THENCE WESTERLY ALONG THE NORTHERLY LINE OF WEST WESTERN AVENUE 457.28 FEET (M=NORTH 80°29'18" WEST 457.02 FEET); THENCE NORTH 2°04' WEST 492.92 FEET; THENCE SOUTH 47°05' EAST 236.7 FEET; THENCE CONTINUING SOUTH 47°04' EAST TO A POINT 100 FEET NORTH OF AND NORTH 1°40' WEST OF THE POINT OF BEGINNING; THENCE SOUTH 1°40' EAST (M=SOUTH 02°21'07" WEST 100.00 FEET) TO THE POINT OF BEGINNING. TOGETHER WITH THE C & O RAILWAY COMPANY RIGHT OF WAY RUNNING THROUGH THE ABOVE DESCRIBED PARCEL. EXCEPT THAT PART WHICH WAS DEEDED TO THE CITY OF MUSKEGON AS RECORDED IN LIBER 2138, PAGES 751 AND 752.



AS A PROFESSIONAL LAND SURVEYOR OF THE STATE OF MICHIGAN, I DO HEREBY CERTIFY THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, I HAVE SURVEYED THE PROPERTY AS DESCRIBED AND SHOWN HEREIN AND THAT THERE EXISTS NO VISIBLE ENCROACHMENTS ON SAID PROPERTY UNLESS NOTED AND THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH A DESCRIPTION FURNISHED BY OTHERS AND SHOULD BE COMPARED TO THE ABSTRACT OF TITLE OR TITLE POLICY FOR ACCURACY, EASEMENTS, OR EXCEPTIONS. THIS SURVEY DOES NOT EXTEND TO ANY UNNAMED PERSON WITHOUT AN EXPRESSED RECERTIFICATION BY THE SURVEYOR.

State of Michigan — Timothy W. DeMumbrum — PROFESSIONAL SURVEYOR No 54454 — LICENSED PROFESSIONAL SURVEYOR

TIMOTHY W. DEMUMBRUM
P.S. NO. 54454
2534 BLACK CREEK ROAD
MUSKEGON, MI. 49444
PHONE : (231)777-3447
FAX : (231)773-3453

DATE: 5/23/18

FILE NO: 04311-0001
SCALE: 1"=100'
SURVEYED BY: TWD
DRN BY: NSS

DEEDS PREPARED UTILIZING THIS LEGAL DESCRIPTION FOR CONVEYANCES MUST MEET THE REQUIREMENTS OF SECTION 109 PARAGRAPH 3 AND 4 OF P.A. 591 OF 1996.

SHEET 1 OF 1

EXHIBIT A-2

Parcel 4:

THOSE PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 88°43' WEST 270.42 FEET (M=NORTH 84°41'53" WEST 270.27 FEET) TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE FOR A POINT OF BEGINNING;
THENCE WESTERLY ALONG THE NORTHERLY LINE OF WEST WESTERN AVENUE 457.28 FEET (M=NORTH 80°29'18" WEST 457.02 FEET); THENCE NORTH 2°04' WEST 492.92 FEET; THENCE SOUTH 47°05' EAST 236.7 FEET; THENCE CONTINUING SOUTH 47°04' EAST TO A POINT 100 FEET NORTH OF AND NORTH 1°40' WEST OF THE POINT OF BEGINNING. TOGETHER WITH THE C & O RAILWAY COMPANY RIGHT OF WAY RUNNING THROUGH THE ABOVE DESCRIBED PARCEL, EXCEPT THAT PART WHICH WAS DEEDED TO THE CITY OF MUSKEGON AS RECORDED IN LIBER 2138, PAGES 751 AND 752.

The property address and tax parcel number listed below are provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

Property Address: 1000 W. Western Avenue, Muskegon, Michigan

Tax Parcel No.: 61-24-205-574-0001-10

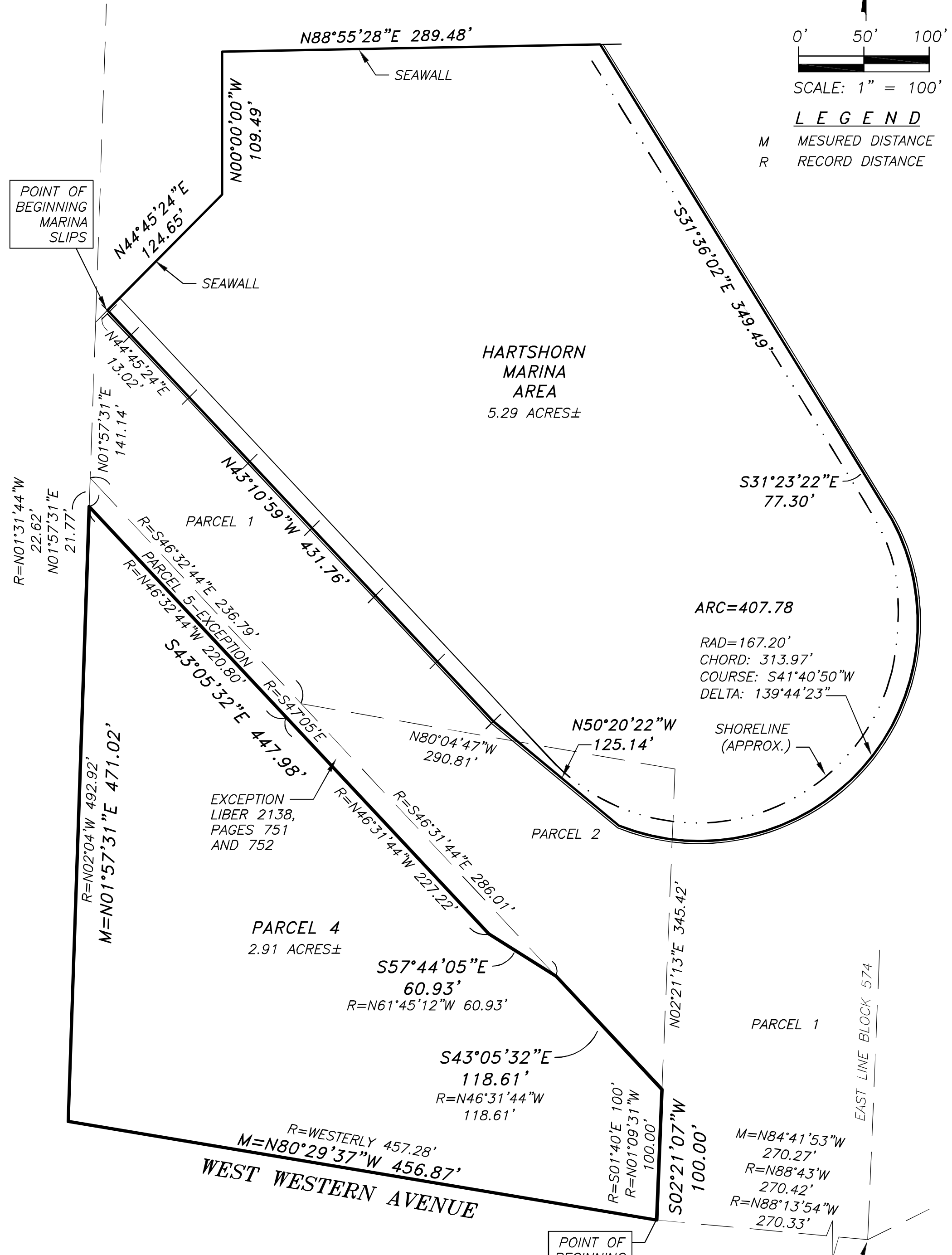
EXHIBIT A-3

Marina Property

WESTSHORE
ENGINEERING & SURVEYING
ENVIRONMENTAL

CERTIFICATE OF SURVEY

FOR: HARBOR WEST, LLC
DESCRIPTIONS: SEE SHEET 2 OF 2



AS A PROFESSIONAL LAND SURVEYOR OF THE STATE OF MICHIGAN, I DO HEREBY CERTIFY THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, I HAVE SURVEYED THE PROPERTY AS DESCRIBED AND SHOWN HEREIN AND THAT THERE EXISTS NO VISIBLE ENCROACHMENTS ON SAID PROPERTY UNLESS NOTED AND THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH A DESCRIPTION FURNISHED BY OTHERS AND SHOULD BE COMPARED TO THE ABSTRACT OF TITLE OR TITLE POLICY FOR ACCURACY, EASEMENTS, OR EXCEPTIONS.
THIS SURVEY DOES NOT EXTEND TO ANY UNNAMED PERSON WITHOUT AN EXPRESSED RECERTIFICATION BY THE SURVEYOR.

TIMOTHY W. DEMUMBRUM DATE:
P.S. NO. 54454
2534 BLACK CREEK ROAD
MUSKEGON, MI. 49444
PHONE : (231)777-3447
FAX : (231)773-3453

FILE NO: 04311-0001 SURVEYED BY: TWD
SCALE: 1"=100' DRN BY: NSS

REV: 7-03-18
DATE: 6-01-18
SHEET 1 OF 2

WESTSHORE
ENGINEERING & SURVEYING
ENVIRONMENTAL

CERTIFICATE OF SURVEY

FOR: HARBOR WEST, LLC

DESCRIPTIONS:

PARCEL 4:

THOSE PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 84 DEGREES 41 MINUTES 53 SECONDS WEST, A DISTANCE OF 270.27 FEET, TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE AND THE POINT OF BEGINNING;
THENCE CONTINUING, NORTH 80 DEGREES 29 MINUTES 37 SECONDS WEST, ALONG SAID NORTHERLY LINE OF WEST WESTERN AVENUE, A DISTANCE OF 456.87 FEET;
THENCE NORTH 01 DEGREES 57 MINUTES 31 SECONDS EAST, A DISTANCE OF 471.02 FEET;
THENCE SOUTH 43 DEGREES 05 MINUTES 32 SECONDS EAST, A DISTANCE OF 447.98 FEET;
THENCE SOUTH 57 DEGREES 44 MINUTES 05 SECONDS EAST, A DISTANCE OF 60.93 FEET;
THENCE SOUTH 43 DEGREES 05 MINUTES 32 SECONDS EAST, A DISTANCE OF 118.61 FEET;
THENCE SOUTH 02 DEGREES 21 MINUTES 07 SECONDS WEST, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2.91 ACRES, MORE OR LESS.

DESCRIPTION FOR MARINA AREA::

PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 84 DEGREES 41 MINUTES 53 SECONDS WEST, A DISTANCE OF 270.27 FEET, TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE, THENCE CONTINUING, NORTH 80 DEGREES 29 MINUTES 37 SECONDS WEST, ALONG SAID NORTHERLY LINE OF WEST WESTERN AVENUE, A DISTANCE OF 456.87 FEET, THENCE NORTH 01 DEGREES 57 MINUTES 31 SECONDS EAST, A DISTANCE OF 612.15 FEET, THENCE NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 13.02 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING, NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 124.65 FEET;
THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 109.49 FEET;
THENCE NORTH 88 DEGREES 55 MINUTES 28 SECONDS EAST, A DISTANCE OF 289.48 FEET;
THENCE SOUTH 31 DEGREES 36 MINUTES 02 SECONDS EAST, A DISTANCE OF 349.49 FEET;
THENCE SOUTH 31 DEGREES 23 MINUTES 22 SECONDS EAST, A DISTANCE OF 77.30 FEET;
THENCE SOUTHWESTERLY, A DISTANCE OF 407.78 FEET, ALONG A CURVE TO THE RIGHT (CURVE DATA BEING: RADIUS=167.20 FEET, DELTA=139°44'23", LONG CHORD=313.97 FEET, LONG CHORD BEARING=SOUTH 41 DEGREES 40 MINUTES 50 SECONDS WEST);
THENCE NORTH 50 DEGREES 20 MINUTES 22 SECONDS WEST, A DISTANCE OF 125.14 FEET;
THENCE NORTH 43 DEGREES 10 MINUTES 59 SECONDS WEST, A DISTANCE OF 431.76 FEET TO THE POINT OF BEGINNING.

BOAT SLIP AREA CONTAINS 5.29 ACRES, MORE OR LESS.

REV: 7-03-18
DATE: 6-01-18
SHEET 2 OF 2

FILE NO: 04311-0001
SURVEYED BY: TWD
DRN BY: NSS

EXHIBIT B

Form of Lease (Boat Slips)

Hartshorn Municipal Marina

Boat Slip Lease Information

DATE: ____________________________

DESIGNATED BOAT SLIP:

Hartshorn Marina (the "Marina"), Pier ____________ Slip _____________

LESSEE:

Name: ____

Address: ____

City, State, Zip ____

Primary Phone: ____________________________________

Alternate Phone: ____________________________________

Email Address: ____________________________________

LESSEE'S CRAFT:

Boat Name: ____

Make: ____

Model: ____

Year: ____

MI Registration Certificate Number: ____________________________________

Length: _________ feet

MONTHLY RENTAL:

$_____________ per month, plus any Utility Costs as described in Section 3 of the Lease.

SECURITY DEPOSIT:

$_____________ due from Lessee on the Date above.

TERM:

Beginning Date: _________________________________

End Date: (Subject to Section 2): _________________________________

Hartshorn Municipal Marina

Boat Slip Lease

This Boat Slip Lease (this "Lease") is made on the Date set forth on this ______ day of _____________, _______, by and between the City of Muskegon, a Michigan municipal corporation, of __________________________, Muskegon, Michigan _____ ("Lessor") and Lessee.

1. Lease. Lessor grants to Lessee the right to occupy and use, for or in connection with the berthing of Lessee's Craft (but no other maritime vessel) subject to the terms of this Lease, (a) the Designated Boat Slip, (b) the pier appurtenant to such Designated Boat Slip, to the extent reasonably required to provide access from the land to Lessee's Craft, and (c) the dock box, if any, that is appurtenant to such Designated Boat Slip. Lessor also grants to Lessee the right to use, on a non-exclusive and non-guaranteed basis, the parking area at the Marina and other amenities (including water and electrical utilities) appurtenant to the Designated Boat Slip.

2. Term of Lease. The Lease is subject to early termination as otherwise described in this Lease. Upon expiration of the Term, (a) this Lease shall continue on a month-to-month basis, for the Monthly Rental subject to 30-days prior written notice by Lessee, or (b) the Term may be extended by a written extension agreement between Lessor and Lessee, in which event (x) the "Term" of the Lease thereafter shall mean the term set forth in such written extension agreement, (y) the Monthly Rental under this Lease thereafter shall be the Monthly Rental set forth in such written extension agreement, and (z) any and all other provisions of the written extension agreement that are inconsistent with any provisions in this Lease shall supersede and amend such inconsistent provisions, and the "Agreement" shall mean this Lease as so extended and amended. Lessor has the right to immediately terminate this Lease if Lessor has falsified any information in this Lease or in the Lessee's application for the Designated Boat Slip. The Lessee shall remove the Lessee's Craft and all of Lessee's associated property from the Marina and adjacent or nearby City of Muskegon mooring and Department of Public Works/Leisure Services boat and trailer storage areas within fifteen days after the termination of this Lease. Early termination of this Lease without cause entitles the Lessee to a pro-rata refund of rental fees paid in advance. The Lessee is not entitled to a refund when this Lease is terminated due to Lessee's falsification of information in Lessee's application for the Designated Boat Slip or this Lease, Lessee's violation of Hartshorn Marina's Rules and Regulations or failure to comply with any condition stipulated therein, or termination pursuant to a default described in Section 12 of this Lease.

3. Payment of Monthly Rental, Including Utility Costs. The Monthly Rental is payable in advance, without demand, deduction, setoff, or abatement, on the first day of each month during the Term. Lessee shall be assessed a late payment fee of $25.00 for (a) any payment of Monthly Rental not timely received and (b) for any returned check. If Lessor separately meters Lessee's electrical service and/or water service, then Lessee shall be responsible for paying the actual costs of such service (collectively, the "Utility Costs"), and the Monthly Rental due as of any particular date shall mean and include the Utility Costs that are due as of such date. The Monthly Rental shall be payable at such address and in such manner as Lessor may from time to time reasonably direct, it being understood that Lessor may reasonably require payment, among other methods of payment, by way of automatic credit card debit, automatic bank draft, or by check drawn on nationally insured banking institution.

4. Insurance. Lessee shall maintain in force, throughout the Term and with carriers licensed to do business and in good standing in the State of Michigan (a) comprehensive general liability insurance with minimum coverage amounts of $300,000 per occurrence and in the aggregate, insuring against death or injury to any person and damage or loss or loss of use of any property. Lessee shall cause Lessee's insurer to issue endorsements to both such policies (x) naming Hartshorn Marina as an interested party, and (y) waiving any right of subrogation against Hartshorn Marina. Within 10 business days of the commencement of the Term, Lessee shall furnish to Lessor certificates of insurance evidencing such coverage. Upon the written request of Lessor at any time during the Term, Lessee shall, within 10 business days of such request, furnish to Lessor certificates of insurance evidencing that all of the coverage remains in full force and effect.

5. Lessee's Maintenance & Related Obligations. Lessee shall maintain Lessee's Craft and the Designated Boat Slip (including any dock box, any appurtenant utility connections) in a safe and clean condition, and shall keep the Marina deck free and clear of obstructions that could pose any danger to others using such Marina deck. Without limiting the foregoing, Lessee shall secure and safely route all utility hoses and cables so as not to pose any hazard across any area of the dock or along any fender. Lessee shall secure any dock box so as not to blow open during high winds, and shall be solely responsible for any damage caused by an improperly secured dock box. Lessee shall not discharge or otherwise dispose of sewage, trash, fuel oil, or any other contaminant in or on the Marina property, or into the water surrounding the Marina property, except in a manner and at a time expressly approved by Lessor. In Lessee's use of the Designated Boat Slip and Lessee's Craft, Lessee shall comply with all applicable local, state, and federal environmental and other rules, regulations, and laws. Lessee shall promptly, at its sole cost and expense, cause to be repaired in a good and workmanlike manner any damage caused by Lessee to the Designated Boat Slip, or the appurtenances thereto, or to the Marina. Lessee shall not modify or alter any portion of the Designated Boat Slip or any of Marina deck or facilities appurtenant to the Designated Boat Slip without the prior written consent of Lessor, which consent may be withheld or denied in Lessor's sole discretion.

6. Security Deposit. Lessor shall have the right, but not the obligation, to apply all or any part of the Security Deposit to any past due obligation of Lessee for Monthly Rental, and/or for the cost of curing any default by Lessee under this Lease, and/or to pay attorneys' fees incurred by Lessor in connection with any such default by Lessee. Within 5 business days of any such application by Lessor of all or any part of the Security Deposit hereunder, Lessee shall be obligated to fully restore to Lessor the amount so applied.

7. Indemnity. Lessee shall fully and forever indemnify, hold harmless, and defend Lessor, Lessor's agents, and Lessor's employees from and against any and all claims, demands, causes of action, liabilities, damages, and costs (including costs of court and attorneys' fees) in connection with, related to, or arising out of any action or omission by Lessee — or by any of Lessee's invitees, agents, contractors, or subcontractors — in any way related to Lessee's Craft and/or the Designated Boat Slip. Guests, relatives, and members of the Lessee's immediate family within the Marina or the City of Muskegon mooring and Department of Public Works/Leisure Services boat and trailer storage areas shall be presumed to be Lessee's invitees under all provisions of this Lease. Ownership of any watercraft docked using the Lessee's Designated Boat Slip will be assumed and accepted by the Lessee as owner or agent of the owner. Lessee's indemnity, hold harmless, and defense obligations shall apply even in instances in which Lessor or any third party is negligent; accordingly, Lessee hereby acknowledges that Lessee is obligated to indemnify, hold harmless, and defend Lessor even against the consequences of Lessor's own negligence. However, notwithstanding the foregoing, Lessee shall have

no obligation to indemnify, hold harmless, or defend Lessor in instances in which Lessor is solely negligent.

8. Lessor's Disclaimers and Lessee's Waivers. Lessee acknowledges that: (a) Lessor shall have absolutely no obligation to provide any security to persons or property at the Marina or nearby or adjacent City of Muskegon mooring and Department of Public Works/Leisure Services boat and trailer storage areas; (b) Lessor shall have absolutely no obligation to carry any insurance of any nature, for its own benefit or for the direct or indirect benefit of any other party, including Lessee; (c) Lessor, Lessor's agents, and Lessor's employees shall have absolutely no liability to Lessee or to any of Lessee's invitees, agents, contractors, or subcontractors for any claim, liability, or damage to person or property; and (d) Lessee accepts the Designated Boat Slip, the appurtenances thereto, and any and all other portions of the Marina "as is, where is," with all faults and defects, whether latent or patent. Lessee waives any such claim it may have against Lessor arising out of any of the foregoing.

9. Rules & Regulations. Lessee acknowledges receipt of a copy of the Rules & Regulations of Hartshorn Marina, and agrees to comply with such Rules & Regulations, as same may be amended from time to time.

10. Assignment and Subletting. The Lease created by this Lease and the rights granted under this Lease are personal to Lessee. Lessee may not assign all or any part of its rights under this Lease, or otherwise sublet the Designated Boat Slip or any part thereof, without the prior written consent of Lessor, which consent may be withheld or denied in Lessor's sole discretion This Lease shall be binding upon and inure to the benefit of Lessor and its successors and assigns.

11. Default by Lessor. In the event of any default by Lessor, Lessee shall give to Lessor written notice of such default, specifying the nature of the default. Lessor shall have 10 days within which to cure such default. If Lessor timely fails to cure such default, then Lessee shall have the right, by giving written notice to Lessor, to terminate this Lease, with such termination being effective as of the final day of the month on which such notice of termination is given. Lessee's right to terminate shall be Lessee's sole remedy under this Lease in the event of such a Lessor default, and Lessor shall not on any account be liable in money damages (including without limitation for any attorneys' fees or costs of court) to Lessee. Notwithstanding the foregoing, Lessee shall have no right to give Lessor any notice of default, and shall have no right to terminate this Lease before the expiration of its stated Term, at any time that Lessee has any Monthly Rental due to Lessor, or is otherwise in default of any of Lessee's other obligations under this Lease.

12. Default by Lessee. If Lessee fails to make payment of any Monthly Rental within fifteen days of delivery by Lessor of notice of any Monthly Rental that is past due, or fails to cure any other default under this Lease within ten days of delivery by Lessor of such default, then a "Lessee Event of Default" shall exist and Lessor shall have the following remedies, which shall be cumulative rather than exclusive:

a. the right to terminate this Lease, and the grant of the Lease hereunder, which termination right may be exercised by written notice by Lessor to Lessee, and which termination shall be effective as of the date of such notice;

b. the right to immediately enter upon and repossess the Designated Boat Slip and all appurtenances thereto, by forcible entry and detainer suit, or otherwise;

c. the right to remove Lessee's Craft (and any personal property then inside Lessee's Craft from its mooring, and to store Lessee's Craft (and such personal property), with all risk of loss belonging solely to Lessee, and with no liability whatsoever to Lessor, and with all costs of storage being deemed to be including among the past due Monthly Rental under this Lease;

d. the right to make any required repairs to the Designated Boat Slip, or to expend any other sums required to cure any defaults by Lessee under this Lease, with all such sums expended being deemed to be included among the past due Monthly Rental under this Lease;

e. the right to terminate Lessee's rights of possession with regard to the Designated Boat Slip and all appurtenances thereto, without demand or notice of any kind and without terminating this Lease, in which event Lessor may, but shall be under no obligation to, relet all or any part of the Designated Boat Slip for credit to Lessee's account, on such terms and conditions as Lessor in its sole discretion shall deem appropriate; and

f. the right to exercise Lessor's rights under the Michigan Uniform Commercial Code with regard to the security interest granted to Lessor in the Secured Property.

In the event of any Lessee Event of Default, Lessor shall have the right to recover from Lessee, whether by way of sale of the Secured Property, or by means of execution and levy on a judgment, or by means of voluntary payment by Lessee, or by some combination thereof: (a) all Monthly Rental that is past due, including any late payment fees due in connection therewith, (b) all Monthly Rental to come due during the remainder of the Term (assuming that Lessor has not terminated this Lease and the Lease hereunder), (c) Lessor's reasonable and necessary attorneys' fees and costs of court, (d) pre-judgment at the lesser of 8% per annum or the maximum allowed by law, and (e) post-judgment interest at lesser of 10% per annum or the maximum allowed by law.

13. Notice. Any notice required or permitted to be given to Lessor shall be given by certified or registered United States mail, postage prepaid, to the address of Lessor set forth on the first page of this Lease, or to any revised address of which Lessor may from to time to time notify Lessee. Such notice to Lessor shall be deemed to have been given on the postmark date or, if any such notice is not postmarked within the State of Michigan, five days after the postmark date. Any notice required or permitted to be given to Lessee may be given either by (a) certified or registered United States mail, postage prepaid, to the address of Lessee set forth on the first page of this Lease, or to any revised address of which Lessee may from to time to time notify Lessor, or (b) via email to the email address of Lessee set forth on the first page of this Lease. Any mailed notice by Lessor shall be deemed to have been given on the postmark date, and any email notice by Lessor shall be deemed to have been given at the time the email is sent, and shall be deemed to have been properly given and received if sent to the email address of Lessee reflected on the first page of this Lease, regardless of whether actually received by Lessee.

14. Relocation of Designated Boat Slip. Lessor shall have the right, from time to time, upon no fewer than 10 days' notice to Lessee to change the location of the Designated Boat Slip; provided, however, that Lessee may not make any such change in order merely to accommodate another user or

potential user of the Lessee's Designated Boat Slip, and in connection with any such relocation: (a) Lessee shall be entitled to the waiver of one month's Monthly Rental, and (b) Lessor shall offer to Lessee a substitute boat slip of at least equal size and with comparable appurtenances (such as any dock box or utility connections), which shall thereupon become Lessee's Designated Boat Slip.

15. Miscellaneous.

a. This Lease (including the Rules & Regulations referred to herein) sets forth the entire agreement between Lessor and Lessee, and supersedes and takes the place of all prior representations, warranties, and agreements, and may be amended only by written instrument signed by the party to be bound.

b. This Lease shall be governed by the laws of the State of Michigan, and exclusive venue for the adjudication of any dispute arising under this Lease shall be in a court of competent jurisdiction in Muskegon County.

c. If any provision or portion of a provision of this Lease is determined to be unenforceable, then the unenforceable provision shall be deemed to have been severed and excised from the Agreement, and the remainder of the Agreement shall remain in full force and effect.

d. Lessee warrants that Lessee is the owner of Lessee's Craft, free and clear of any adverse liens or claims, save and except claims by any lender of a security interest therein arising prior to the Date of this Lease.

e. Any request for a refund of rent or security deposits must be given to Lessor in writing. Lessor will issue refunds in the full amount within 60 days in which they are requested.

IN WITNESS WHEREOF, Lessor and Lessee have signed this Lease on the date set forth above.

LESSOR:	LESSEE:
CITY OF MUSKEGON	______________________________
By: ____________________________	Name: ____________________________
Name: ____________________________	Date: ____________________
Title: ____________________	
Date: ____________________	

EXHIBIT C

Memorandum of Right of First Refusal for Marina and Marina Operation

MEMORANDUM OF RIGHT OF FIRST REFUSAL

This MEMORANDUM OF RIGHT OF FIRST REFUSAL ("**Memorandum**") is executed as of ___________, 2018, by and between THE CITY OF MUSKEGON, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 (the "**Grantor**"), and HARBOR WEST, LLC, a Michigan limited liability company, of 108 South University, Suite 6, Mt. Pleasant, Michigan 48858 (the "**Grantee**"), based upon the following facts:

Grantor and Grantee have entered into a First Amended and Restated Real Estate and Development Agreement ("**Purchase Agreement**") dated as of August _______, 2018, which Purchase Agreement contains a right of first refusal for the benefit of Grantee ("**First Refusal**"). Under the First Refusal, Grantor has granted to Grantee a right of first refusal relating to certain real estate located in the City of Muskegon, County of Muskegon, State of Michigan, more fully described on **Exhibit A** attached to this Memorandum, together with all the improvements, fixtures, easements, and appurtenances associated with that real estate and all assets located on the real estate. This First Refusal is a covenant running with the land owned by Grantor and described herein.

This Memorandum is executed for the purpose of giving record notice of the existence of the First Refusal. All terms and conditions of the First Refusal are incorporated into this Memorandum by reference. Anyone wishing to refer to the First Refusal may do so by referring to the Liber and Page in which this Memorandum is recorded.

[Remainder of Page Intentionally Left Blank]

Grantor and Grantee executed this Memorandum of Right of First Refusal as of the date first set forth above

THE CITY OF MUSKEGON, a Michigan municipal corporation

____

By: __________________________________

Its: __________________________________

Grantor

STATE OF MICHIGAN)
)ss:
COUNTY OF __________________)

Acknowledged before me in ____________ County, Michigan, on _______________, 2018, by __________________, as ______________ of the City of Muskegon, a Michigan municipal corporation, on behalf of the municipal corporation.

____
Notary public, State of Michigan, County of _____________
My commission expires _______________________________
Acting in the County of _________________

HARBOR WEST, LLC, a Michigan limited liability company

By:

Its: Member

Grantee

STATE OF MICHIGAN)
:ss.
COUNTY OF Emmet)

This instrument was acknowledged before me in Emmet County, Michigan on August 3, 2018 by W. Sidney Smith as Member of Harbor West, LLC, a Michigan limited liability company on behalf of the limited liability company.

Heather A. Denison

Notary public, State of Michigan, County of Charlevoix
My commission expires 11-30-2019
Acting in the County of Emmet

PREPARED BY AND RETURN TO:
Jared T. Belka
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, Michigan 49503-2487
Telephone: (616) 752-2000

HEATHER A. DENISON
Notary Public, State of Michigan
County of Charlevoix
My Commission Expires: 11/30/2019
Acting in Emmet County

17209911

EXHIBIT A

Legal Description of Marina

PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 84 DEGREES 41 MINUTES 53 SECONDS WEST, A DISTANCE OF 270.27 FEET, TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE, THENCE CONTINUING, NORTH 80 DEGREES 29 MINUTES 37 SECONDS WEST, ALONG SAID NORTHERLY LINE OF WEST WESTERN AVENUE, A DISTANCE OF 456.87 FEET, THENCE NORTH 01 DEGREES 57 MINUTES 31 SECONDS EAST, A DISTANCE OF 612.15 FEET, THENCE NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 13.02 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING, NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 124.65 FEET;
THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 109.49 FEET;
THENCE NORTH 88 DEGREES 55 MINUTES 28 SECONDS EAST, A DISTANCE OF 289.48 FEET;
THENCE SOUTH 31 DEGREES 36 MINUTES 02 SECONDS EAST, A DISTANCE OF 349.49 FEET;
THENCE SOUTH 31 DEGREES 23 MINUTES 22 SECONDS EAST, A DISTANCE OF 77.30 FEET;
THENCE SOUTHWESTERLY, A DISTANCE OF 407.78 FEET, ALONG A CURVE TO THE RIGHT (CURVE DATA BEING: RADIUS=167.20 FEET, DELTA=139°44’23”, LONG CHORD=313.97 FEET, LONG CHORD BEARING=SOUTH 41 DEGREES 40 MINUTES 50 SECONDS WEST);
THENCE NORTH 50 DEGREES 20 MINUTES 22 SECONDS WEST, A DISTANCE OF 125.14 FEET;
THENCE NORTH 43 DEGREES 10 MINUTES 59 SECONDS WEST, A DISTANCE OF 431.76 FEET TO THE POINT OF BEGINNING.

BOAT SLIP AREA CONTAINS 5.29 ACRES, MORE OR LESS.

EXHIBIT D

Memorandum of Right of First Refusal (Marina Slips)

MEMORANDUM OF RIGHT OF FIRST REFUSAL

This MEMORANDUM OF RIGHT OF FIRST REFUSAL ("**Memorandum**") is executed as of **___________**, 2018, by and between THE CITY OF MUSKEGON, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 (the "**Grantor**"), and HARBOR WEST, LLC, a Michigan limited liability company, of 108 South University, Suite 6, Mt. Pleasant, Michigan 48858 (the "**Grantee**"), based upon the following facts:

Grantor and Grantee have entered into a First Amended and Restated Real Estate and Development Agreement ("**Purchase Agreement**") dated as of August **______**, 2018, which Purchase Agreement contains a right of first refusal for the benefit of Grantee ("**First Refusal**"). Under the First Refusal, Grantor has granted to Grantee a right of first refusal relating to the availability of certain slip leases in a marina on real estate owned by Grantor located in the City of Muskegon, County of Muskegon, State of Michigan, more fully described on **Exhibit A** attached to this Memorandum. This First Refusal is a covenant running with the land owned by Grantor and described herein.

This Memorandum is executed for the purpose of giving record notice of the existence of the First Refusal. All terms and conditions of the First Refusal are incorporated into this Memorandum by reference. Anyone wishing to refer to the First Refusal may do so by referring to the Liber and Page in which this Memorandum is recorded.

[Remainder of Page Intentionally Left Blank]

Grantor and Grantee executed this Memorandum of Right of First Refusal as of the date first set forth above

THE CITY OF MUSKEGON, a Michigan municipal corporation

____

By: __________________________________

Its: __________________________________

Grantor

STATE OF MICHIGAN)
)ss:
COUNTY OF __________________)

Acknowledged before me in ____________ County, Michigan, on _______________, 2018, by __________________, as ______________ of the City of Muskegon, a Michigan municipal corporation, on behalf of the municipal corporation.

____
Notary public, State of Michigan, County of _____________
My commission expires ______________________________
Acting in the County of _________________

HARBOR WEST, LLC, a Michigan limited liability company

By: W. Sidney Smith

Its: Member

Grantee

STATE OF MICHIGAN)
:ss.
COUNTY OF Emmet)

This instrument was acknowledged before me in Emmet County, Michigan on August 3, 2018 by W. Sidney Smith as Member of Harbor West, LLC, a Michigan limited liability company on behalf of the limited liability company.

Heather A. Denison

Notary public, State of Michigan, County of Charlevoix
My commission expires 11-30-2019
Acting in the County of Emmet

PREPARED BY AND RETURN TO:
Jared T. Belka
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, Michigan 49503-2487
Telephone: (616) 752-2000

HEATHER A. DENISON
Notary Public, State of Michigan
County of Charlevoix
My Commission Expires: 11/30/2019
Acting in Emmet County

17209911

EXHIBIT A

Legal Description of Marina

PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 84 DEGREES 41 MINUTES 53 SECONDS WEST, A DISTANCE OF 270.27 FEET, TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE, THENCE CONTINUING, NORTH 80 DEGREES 29 MINUTES 37 SECONDS WEST, ALONG SAID NORTHERLY LINE OF WEST WESTERN AVENUE, A DISTANCE OF 456.87 FEET, THENCE NORTH 01 DEGREES 57 MINUTES 31 SECONDS EAST, A DISTANCE OF 612.15 FEET, THENCE NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 13.02 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING, NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 124.65 FEET;
THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 109.49 FEET;
THENCE NORTH 88 DEGREES 55 MINUTES 28 SECONDS EAST, A DISTANCE OF 289.48 FEET;
THENCE SOUTH 31 DEGREES 36 MINUTES 02 SECONDS EAST, A DISTANCE OF 349.49 FEET;
THENCE SOUTH 31 DEGREES 23 MINUTES 22 SECONDS EAST, A DISTANCE OF 77.30 FEET;
THENCE SOUTHWESTERLY, A DISTANCE OF 407.78 FEET, ALONG A CURVE TO THE RIGHT (CURVE DATA BEING: RADIUS=167.20 FEET, DELTA=139°44’23”, LONG CHORD=313.97 FEET, LONG CHORD BEARING=SOUTH 41 DEGREES 40 MINUTES 50 SECONDS WEST);
THENCE NORTH 50 DEGREES 20 MINUTES 22 SECONDS WEST, A DISTANCE OF 125.14 FEET;
THENCE NORTH 43 DEGREES 10 MINUTES 59 SECONDS WEST, A DISTANCE OF 431.76 FEET TO THE POINT OF BEGINNING.

BOAT SLIP AREA CONTAINS 5.29 ACRES, MORE OR LESS.

EXHIBIT E

Restrictive Covenant

RESTRICTIVE COVENANT

This **RESTRICTIVE COVENANT** made as of this **______** day of **______**, 2018, by **THE CITY OF MUSKEGON**, a Michigan municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49442 ("**Declarant**"), and **HARBOR WEST, LLC**, a Michigan limited liability company, of 108 South University, Suite 6, Mt. Pleasant, Michigan 48858 ("**Buyer**").

WHEREAS, Declarant owns fee simple title to that certain parcel of real estate located in the City of Muskegon, County of Muskegon, State of Michigan, as shown on **Exhibit A** attached hereto and incorporated herein by reference (the "**Declarant's Property**");

WHEREAS, Buyer entered into a First Amended and Restated Real Estate Sale and Development Agreement dated August **____**, 2018 (the "**Purchase Agreement**"), with Declarant, under the terms of which Buyer agreed to purchase and Declarant has agreed to sell a tract of property immediately adjacent to Declarant's Property, and legally described on **Exhibit B** attached hereto and incorporated herein by reference and as shown on Exhibit B ("**Buyer's Property**");

WHEREAS, as a condition to Buyer's purchase of Buyer's Property, Buyer and Declarant have agreed to place a certain restriction against Declarant's Property for the benefit of Buyer and the successors and assigns of Buyer's Property; and

WHEREAS, in order to comply with the requirements set forth in the Purchase Agreement, Declarant wishes to and by this document intends to have a certain restriction placed upon the Property.

NOW THEREFORE, for Ten Dollars ($10.00) and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Declarant does hereby publish, declare and impose the following restriction:

1. **Restriction**. For the period set forth in Paragraph 2 below, Declarant shall not build, install or allow to be built or installed any improvements or structures in the area of the Property as shown in "cross hatch" on Exhibit A ("**Restricted Area**"), provided that Declarant may use the Restricted Area for landscaping so long as the "line of sight" from Buyer's buildings on Buyer's Property adjacent to Declarant's Property and the Marina, as shown on Exhibit A attached hereto, remains free, clear and unimpaired by landscaping in the Restricted Area.

2. **Duration**. This Restrictive Covenant shall exist in perpetuity and run with the land as a burden on the Declarant's Property, for the benefit of the Buyer's property, and shall be enforceable by Buyer or their successors or assigns until terminated by mutual agreement of the parties.

3. **Benefit**. The Restrictive Covenant is only for the benefit of Buyer, its affiliates, and its heirs, successors and assigns, who shall have the right to invoke and enforce the Restrictive Covenant contained herein by any and all means available at law or in equity.

4. **Amendments**. This Restrictive Covenant may be amended, modified, or terminated (in whole or in part) from time to time by written document executed and acknowledged by Declarant and Buyer, or their respective successors and assigns, and duly recorded in the Muskegon County Register of Deeds, Michigan, or in such other office as may from time to time by law be charged with the duty of maintaining the public records of Muskegon County, Michigan, and shall not otherwise by amended, modified, or terminated during the term hereof.

5. **Governing Law**. This Restrictive Covenant shall be governed by and construed in accordance with the laws of the State of Michigan.

6. **Entire Agreement**. This Restrictive Covenant contains the entire understanding of the parties hereto, and such parties acknowledge that there have been no representations or understandings other than those expressly set forth in this Restrictive Covenant.

7. **Counterparts**. This Restrictive Covenant may be executed in one or more counterparts, each such counterpart being deemed an original and all such counterparts taken together constituting but one and the same instrument.

8. **Transfer Taxes**. This Restrictive Covenant is exempt from the real estate transfer taxes under MCLA §§ 207.505(a) and 207.526(a) because the value of the consideration given is less than One Hundred Dollars ($100).

(THE REST OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK)

IN WITNESS WHEREOF, the undersigned have caused this instrument to be signed and sealed as of this 3 day of August, 2018.

BUYER:

HARBOR WEST, LLC
a Michigan limited liability company

By:
Name: W. Sidney Smith
Title: Member

STATE OF MICHIGAN

COUNTY OF Emmet

This instrument was acknowledged before me in Emmet County, Michigan on August 3, 2018 by W. Sidney Smith as Member of Harbor West, LLC, a Michigan limited liability company on behalf of the limited liability company.

Heather A. Denison
Notary public, State of Michigan, County of Charlevoix
My commission expires 11-30-2019
Acting in the County of Emmet

HEATHER A. DENISON
Notary Public, State of Michigan
County of Charlevoix
My Commission Expires: 11/30/201
Acting in Emmet Coun

IN WITNESS WHEREOF, the undersigned have caused this instrument to be signed and sealed as of this _____ day of ________________, 2018.

DECLARANT:

THE CITY OF MUSKEGON,
a Michigan municipal corporation

By: ________________________________
Name: ____________________________
Title: ______________________________

STATE OF MICHIGAN

COUNTY OF _________________

Acknowledged before me in ____________ County, Michigan, on _______________, 2018, by ___________________, as ______________ of the City of Muskegon, a Michigan municipal corporation, on behalf of the municipal corporation.

Notary public, State of Michigan, County of _____________
My commission expires _______________________________
Acting in the County of ______________________________

PREPARED BY AND RETURN TO:
Jared T. Belka
WARNER NORCROSS & JUDD LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, Michigan 49503-2487
Telephone: (616) 752-2000

17209911

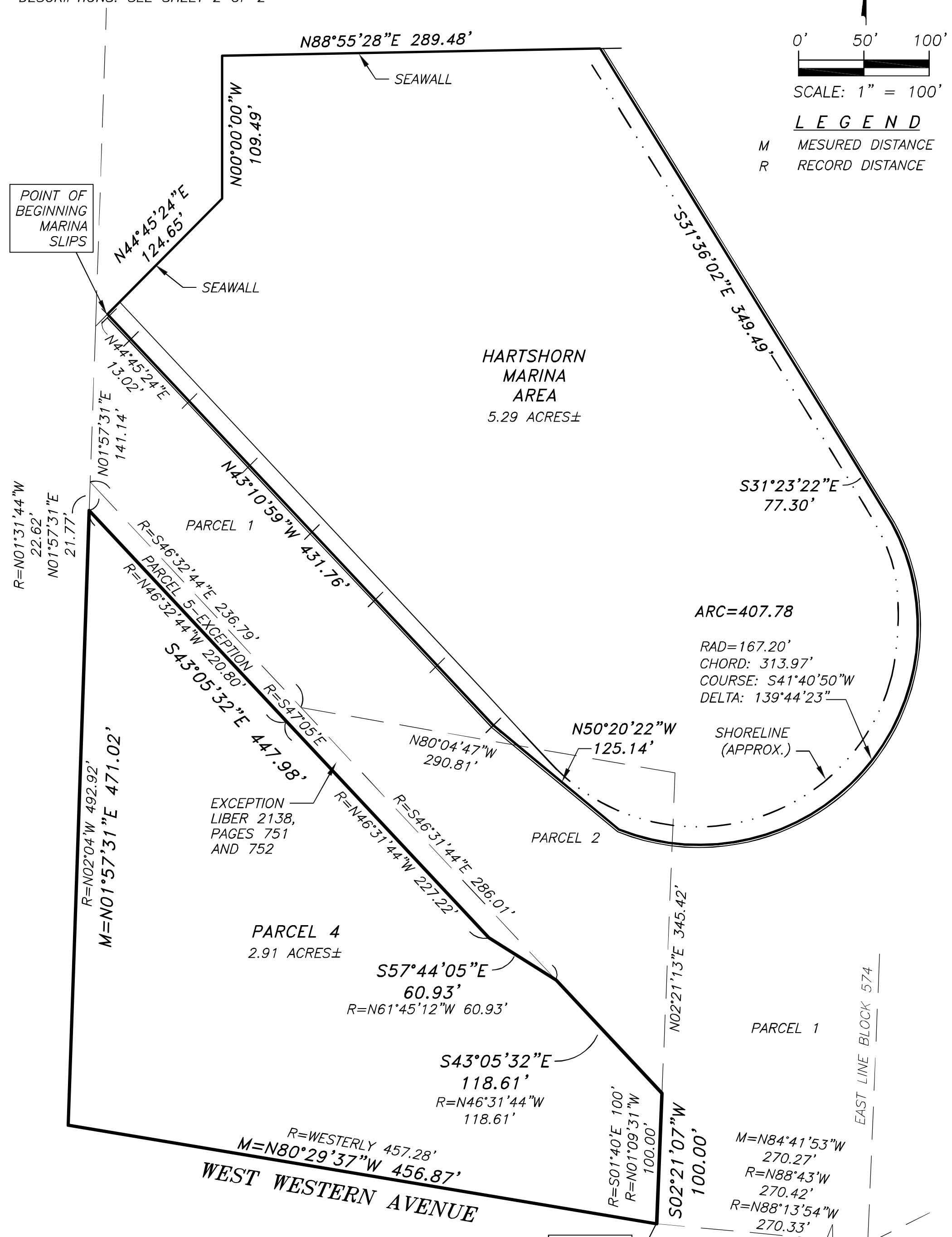
EXHIBIT A

Depiction of City's Property

WESTSHORE
ENGINEERING & SURVEYING
ENVIRONMENTAL

CERTIFICATE OF SURVEY

FOR: HARBOR WEST, LLC
DESCRIPTIONS: SEE SHEET 2 OF 2



AS A PROFESSIONAL LAND SURVEYOR OF THE STATE OF MICHIGAN, I DO HEREBY CERTIFY THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, I HAVE SURVEYED THE PROPERTY AS DESCRIBED AND SHOWN HEREIN AND THAT THERE EXISTS NO VISIBLE ENCROACHMENTS ON SAID PROPERTY UNLESS NOTED AND THAT THIS SURVEY WAS PREPARED IN ACCORDANCE WITH A DESCRIPTION FURNISHED BY OTHERS AND SHOULD BE COMPARED TO THE ABSTRACT OF TITLE OR TITLE POLICY FOR ACCURACY, EASEMENTS, OR EXCEPTIONS.
THIS SURVEY DOES NOT EXTEND TO ANY UNNAMED PERSON WITHOUT AN EXPRESSED RECERTIFICATION BY THE SURVEYOR.

TIMOTHY W. DEMUMBRUM DATE:
P.S. NO. 54454
2534 BLACK CREEK ROAD
MUSKEGON, MI. 49444
PHONE : (231)777-3447
FAX : (231)773-3453

FILE NO: 04311-0001 SURVEYED BY: TWD
SCALE: 1"=100' DRN BY: NSS

REV: 7-03-18
DATE: 6-01-18
SHEET 1 OF 2

WESTSHORE
ENGINEERING & SURVEYING
ENVIRONMENTAL

CERTIFICATE OF SURVEY

FOR: HARBOR WEST, LLC

DESCRIPTIONS:

PARCEL 4:

THOSE PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 84 DEGREES 41 MINUTES 53 SECONDS WEST, A DISTANCE OF 270.27 FEET, TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE AND THE POINT OF BEGINNING;
THENCE CONTINUING, NORTH 80 DEGREES 29 MINUTES 37 SECONDS WEST, ALONG SAID NORTHERLY LINE OF WEST WESTERN AVENUE, A DISTANCE OF 456.87 FEET;
THENCE NORTH 01 DEGREES 57 MINUTES 31 SECONDS EAST, A DISTANCE OF 471.02 FEET;
THENCE SOUTH 43 DEGREES 05 MINUTES 32 SECONDS EAST, A DISTANCE OF 447.98 FEET;
THENCE SOUTH 57 DEGREES 44 MINUTES 05 SECONDS EAST, A DISTANCE OF 60.93 FEET;
THENCE SOUTH 43 DEGREES 05 MINUTES 32 SECONDS EAST, A DISTANCE OF 118.61 FEET;
THENCE SOUTH 02 DEGREES 21 MINUTES 07 SECONDS WEST, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 2.91 ACRES, MORE OR LESS.

DESCRIPTION FOR MARINA AREA::

PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 84 DEGREES 41 MINUTES 53 SECONDS WEST, A DISTANCE OF 270.27 FEET, TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE, THENCE CONTINUING, NORTH 80 DEGREES 29 MINUTES 37 SECONDS WEST, ALONG SAID NORTHERLY LINE OF WEST WESTERN AVENUE, A DISTANCE OF 456.87 FEET, THENCE NORTH 01 DEGREES 57 MINUTES 31 SECONDS EAST, A DISTANCE OF 612.15 FEET, THENCE NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 13.02 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING, NORTH 44 DEGREES 45 MINUTES 24 SECONDS EAST, A DISTANCE OF 124.65 FEET;
THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 109.49 FEET;
THENCE NORTH 88 DEGREES 55 MINUTES 28 SECONDS EAST, A DISTANCE OF 289.48 FEET;
THENCE SOUTH 31 DEGREES 36 MINUTES 02 SECONDS EAST, A DISTANCE OF 349.49 FEET;
THENCE SOUTH 31 DEGREES 23 MINUTES 22 SECONDS EAST, A DISTANCE OF 77.30 FEET;
THENCE SOUTHWESTERLY, A DISTANCE OF 407.78 FEET, ALONG A CURVE TO THE RIGHT (CURVE DATA BEING: RADIUS=167.20 FEET, DELTA=139°44'23", LONG CHORD=313.97 FEET, LONG CHORD BEARING=SOUTH 41 DEGREES 40 MINUTES 50 SECONDS WEST);
THENCE NORTH 50 DEGREES 20 MINUTES 22 SECONDS WEST, A DISTANCE OF 125.14 FEET;
THENCE NORTH 43 DEGREES 10 MINUTES 59 SECONDS WEST, A DISTANCE OF 431.76 FEET TO THE POINT OF BEGINNING.

BOAT SLIP AREA CONTAINS 5.29 ACRES, MORE OR LESS.

REV: 7-03-18
DATE: 6-01-18
SHEET 2 OF 2

FILE NO: 04311-0001
SURVEYED BY: TWD
DRN BY: NSS

EXHIBIT B

<u>Parcel 4:</u>

THOSE PARTS OF BLOCKS 574 AND 575, REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON, MUSKEGON COUNTY, MICHIGAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEASTERLY CORNER OF BLOCK 574 OF SAID REVISED PLAT (OF 1903) OF THE CITY OF MUSKEGON; THENCE NORTH 88°43' WEST 270.42 FEET (M=NORTH 84°41'53" WEST 270.27 FEET) TO A POINT ON THE NORTHERLY LINE OF WEST WESTERN AVENUE FOR A POINT OF BEGINNING;
THENCE WESTERLY ALONG THE NORTHERLY LINE OF WEST WESTERN AVENUE 457.28 FEET (M=NORTH 80°29'18" WEST 457.02 FEET); THENCE NORTH 2°04' WEST 492.92 FEET; THENCE SOUTH 47°05' EAST 236.7 FEET; THENCE CONTINUING SOUTH 47°04' EAST TO A POINT 100 FEET NORTH OF AND NORTH 1°40' WEST OF THE POINT OF BEGINNING. TOGETHER WITH THE C & O RAILWAY COMPANY RIGHT OF WAY RUNNING THROUGH THE ABOVE DESCRIBED PARCEL, EXCEPT THAT PART WHICH WAS DEEDED TO THE CITY OF MUSKEGON AS RECORDED IN LIBER 2138, PAGES 751 AND 752.

The property address and tax parcel number listed below are provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

Property Address: 1000 W. Western Avenue, Muskegon, Michigan

Tax Parcel No.: <u>61-24-205-574-0001-10</u>

EXHIBIT F

Project Timeline

1	Establish Overall Concept of Phase 1	5 days	8/2/18	8/7/18
2	Civil Design and Construction Documents	110 days	7/24/18	11/11/18
3	Architectural Design and Construction Documents	90 days	7/1/18	9/29/18
4	Owner Review and Approval	5 days	9/29/18	10/4/18
5	Planned Unit Development (PUD) - Site	22 days	10/4/18	10/31/18
6	Application Submission	1 day	10/4/18	10/4/18
7	PUD Review and Revisions (if necessary)	20 days	10/5/18	10/25/18
8	PUD Approval	1 day	10/26/18	10/26/18
9	Building Permit - Clubhouse	27 days	9/30/18	10/27/18
10	Application Submission	1 day	9/30/18	9/30/18
11	Plan Review and Revisions (if necessary)	25 days	10/1/18	10/26/18
12	Building Permit Issuance	1 day	10/27/18	10/27/18
13	Bidding Phase (Site and Clubhouse)	39 days	10/25/18	12/3/18
14	Create Bid Packages/Project Manual	5 days	10/25/18	10/30/18
15	Out to Bid	15 days	10/31/18	11/15/18
16	Formulate Bid Tabulation/Schedule Post-Bids	3 days	11/16/18	11/19/18
17	Post-Bids	5 days	11/20/18	11/25/18
18	Establish Final GMP	2 days	11/26/18	11/28/18
19	Owner Review and Approval	2 days	11/29/18	12/1/18
20	Owner Contract Executed	2 days	12/1/18	12/3/18
21	Trade Contracts Executed	3 days	12/4/18	12/7/18
22	Brownfield/TIF	120 days	8/30/18	11/30/18
23	Precon Meeting	1 day	12/10/18	12/10/18
24	Mobilize	2 days	12/11/18	12/13/18

25	Under Construction	335 days	12/14/18	11/14/19
26	Earthwork Removal	20 days	12/14/18	1/3/19
27	Underground Utilities	65 days	1/4/19	3/10/2019
28	Infill/Site Balancing	30 days	3/11/19	4/11/19
29	Roadways/Pathways/Hardscapes	60 days	4/12/19	6/12/19
30	Construction of Clubhouse and Surrounding Amenities	135 days	4/18/19	10/23/19
31	Construction of Townhomes (Phase 1 Only)	220 days	5/9/19	3/11/20

Date:	August 14, 2018
To:	Honorable Mayor and City Commissioners
From:	Jeffrey A. Lewis Director of Public Safety
RE:	Memorandum of Understanding – Justice Assistance Grant

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 2018 Justice Assistance Grant. It if 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 22nd.

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 $23,030 and City of Muskegon Heights $14,941. Note 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.

MEMORANDUM OF UNDERSTANDING
THE CITY OF MUSKEGON
THE COUNTY OF MUSKEGON
THE CITY OF MUSKEGON HEIGHTS

FY 2018 JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD
Regular Funding / Local Solicitation

This Agreement is made and entered into on the _______ day of ___________, 2018, by and between the County of Muskegon, acting by and through its governing body, the Board of County Commissioners, located at 990 Terrace Street, Muskegon, Michigan 49442 and the City of Muskegon, acting by and through its governing body, the City Commission, located at 933 Terrace Street, Muskegon, Michigan 49443-0536, and the City of Muskegon Heights, acting by and through its governing body, the City Council, located at 2724 Peck Street, Muskegon Hts., MI 49444, all of Muskegon County, State of Michigan, witnesseth:

WHEREAS, the CITY OF MUSKEGON has agreed to serve as the applicant/fiscal agent for the joint funds under the: Justice Assistance Grant(Local Solicitation) as the Bureau of Justice Assistance has designated the allocation to the law enforcement communities in Muskegon County as a disparate allocation; and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions, hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body find that the performance of this Agreement is in the best interest of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the breakdown of allocated funding agreed upon by those entities involved in the disparate funding is $ 23,030 to the CITY OF MUSKEGON and $ 14,941 to the CITY OF MUSKEGON HEIGHTS; and

WHEREAS, the CITY OF MUSKEGON, CITY OF MUSKEGON HEIGHTS and COUNTY OF MUSKEGON believe it to be in their best interests to allocate the JAG funds as specified in this Agreement.

NOW THEREFORE, THE COUNTY OF MUSKEGON, CITY OF MUSKEGON AND CITY OF MUSKEGON HEIGHTS agree as follows:

AGREEMENT

1. THE CITY OF MUSKEGON will act as the fiscal agent/applicant agency.
2. The total eligible joint allocation for the disparate jurisdictions of $ 37,971 will be allocated as follows: COUNTY OF MUSKEGON - $ 0; CITY OF MUSKEGON - $23,030 CITY OF MUSKEGON HEIGHTS - $ 14,941
3. Each municipality will be responsible for its actions in the use of any equipment purchased under this Agreement and the fiscal agent shall not be liable for any civil liability that may arise from the purchase of the use of the equipment.
4. The CITY OF MUSKEGON HEIGHTS will be responsible for submitting quarterly reports to the CITY OF MUSKEGON by the third day of the month following the quarter in the reporting fashion required by the CITY OF MUSKEGON and for any month in which an expenditure under the grant has occurred the CITY OF MUSKEGON HEIGHTS will submit a reimbursement request to the CITY OF MUSKEGON by the third day of the following month along with backup documentation such as invoices.
5. The CITY OF MUSKEGON HEIGHTS will be responsible for the accuracy of all data submitted to the CITY OF MUSKEGON for submission to the Bureau of Justice

Programs and will be liable for penalties as a result of submitting the data late and for any inaccurate data.

6. Nothing in the performance of this Agreement shall impose any liability for claims against the CITY OF MUSKEGON passing from this program or from the CITY OF MUSKEGON HEIGHT's expenditure of the JAG funds.

7. By entering into this Agreement, the parties do not intent to create any obligations, express or implied, other than those set out herein. Further, this Agreement shall not create any rights in any party not a signatory hereto.

COUNTY OF MUSKEGON

Dated:_______________, 2018 By:_____________________________
Benjamin E. Cross, Chairman
County Board of Commissioners

CITY OF MUSKEGON

Dated:_______________, 2018 By:_____________________________
Stephen Gawron, Mayor

CITY OF MUSKEGON HEIGHTS

Dated:_______________, 2018 By:______________________________
Kimberley Sims, Mayor

Commission Meeting Date: August 14, 2018

Date: August 10, 2018

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Rezoning Request for a Portion of the Property at 710 Pulaski Ave

---

SUMMARY OF REQUEST:

Request to rezone a portion of the property at 710 Pulaksi Ave from I-1, Light Industrial to B-4, General Business.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the rezoning

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the request at their July 12 meeting, with four members absent.

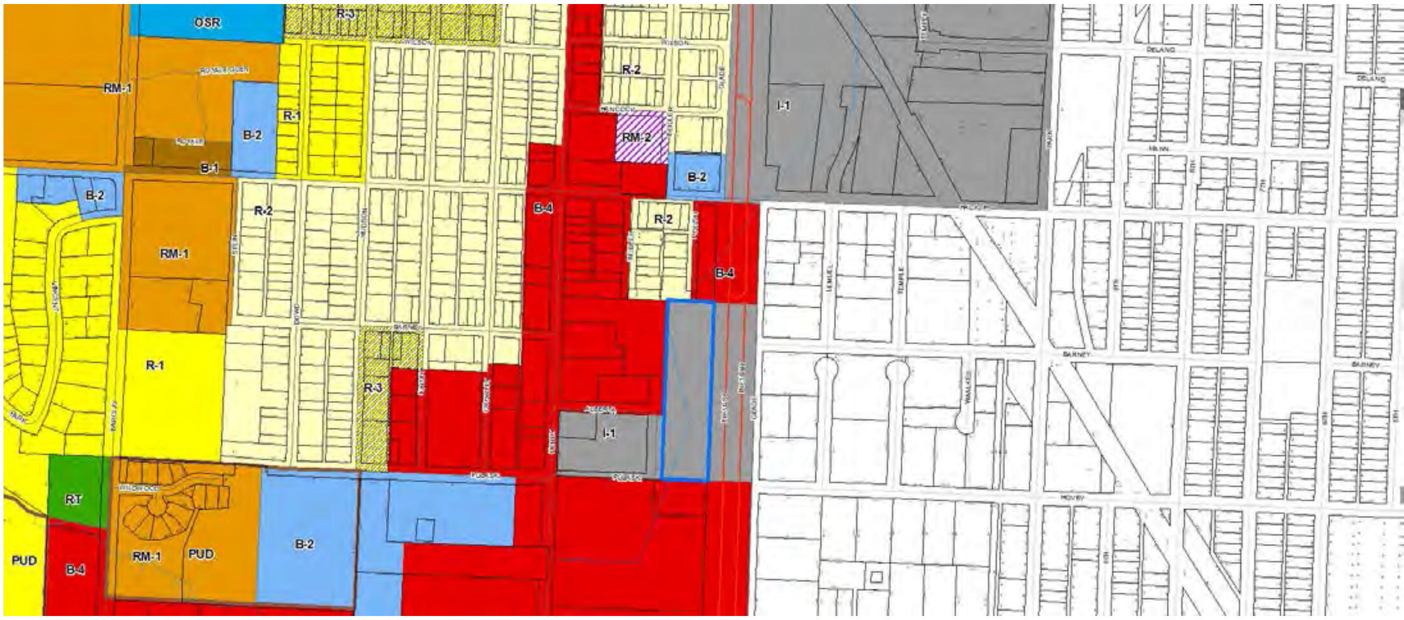
SUMMARY

1. The property is zoned I-1, Light Industrial. The building is used by Ramos Towing. The northern half of the property is vacant.
2. The applicant would like to rent space to a dance studio, but that use in not allowed in industrial districts. The applicant would like to rezone a portion of the property to B-4 to allow for the dance studio and also for their future development plans on the northern portion of the property.
3. This area has a mixture of several different uses, with business being the most prominent. Northern Machine Tool and Ramos Towing are the only industrial properties on the block. The Seaway Industrial Park is located just to the northeast of this property.
4. Notice was sent to all property owners/tenants within 300 feet of this property. At the time of this writing, staff had not received any comments from the public.

710 Pulaski Ave looking east. The owner is seeking to use the space on the left as a dance studio.

Aerial Map

Zoning Map



Portion to rezone to B-4 in Red

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO.________

An ordinance to amend the zoning map of the City to provide for a zone change for a portion of the property from I-1, Light Industrial to B-4, General Business.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning for a portion of the following described property from I-1, Light Industrial to B-4, General Business.

CITY OF MUSKEGON SEC 31 T10N R16W E 409 FT OF S 829 FT OF NW FRL 1/4 OF SW FRL 1/4 SEC 31 T 10 N R 16 W EXC THAT PT TH'OF DEEDED TO STATE OF MI FOR HWY PURPOSES ALSO EXC E 62 FT TH'OF ALSO E 1/2 OF VAC BEIDLER ST ADJ TO SD DESC

This ordinance adopted:

Ayes:____

Nayes:____

Adoption Date:___________________________

Effective Date:___________________________

First Reading:____________________________

Second Reading:__________________________

CITY OF MUSKEGON

By: ___________________________
Ann Meisch, MMC
City Clerk

CERTIFICATE
(Rezoning a portion of 710 Pulaski Ave I-1 to B-4)

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 14th day of August, 2018, 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: ____________________, 2018 __________________________________

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 14, 2018, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for a portion of the property from I-1 to B-4:

> CITY OF MUSKEGON SEC 31 T10N R16W E 409 FT OF S 829 FT OF NW FRL 1/4 OF SW FRL 1/4 SEC 31 T 10 N R 16 W EXC THAT PT TH'OF DEEDED TO STATE OF MI FOR HWY PURPOSES ALSO EXC E 62 FT TH'OF ALSO E 1/2 OF VAC BEIDLER ST ADJ TO SD DESC

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 ____________________, 2018 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 14, 2018

Date: August 10, 2018

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Sale of City-Owned Property at 1870 Huizenga St & 1080 E Holbrook Ave

---

SUMMARY OF REQUEST:

Newkirk Electric, located at 1875 Roberts St, has requested to purchase the two vacant, industrially-zoned properties to expand their outdoor storage area. They are offering $30,000 and to split the closing costs. 1870 Huizenga is considered a buildable lot, but 1080 E Holbrook is not large enough to be considered buildable. Staff is requesting permission to enter into a purchase agreement with the applicant.

FINANCIAL IMPACT:

The City will see increased revenue from the sale of the lots.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommend approval of the sale.

COMMITTEE RECOMMENDATION:

None

True Cash Values:
1870 Huizenga - $28,000
1080 E Holbrook - $17,500

8/10/18

Commission Meeting Date: August 14, 2018

Date: August 10, 2018

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Sale of City-Owned Property in the Seaway Industrial Park

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SUMMARY OF REQUEST:

MTC Enterprises of Michigan, Inc has requested to purchase lots 1 and 2 in the Seaway Industrial Park. They are offering $300,000 total for both lots and are proposing to construct a provisioning center on one parcel and either a cultivation building or processing center on the other parcel. The offer is contingent upon unencumbered title and their ability to obtain State and local licensing within 120 days of acceptance of the proposal. If they need additional time to obtain licensing and all necessary approvals, they will agree to pay the City $3,000 per month non-refundable but credited to wards the purchase price at closing. Staff is requesting permission to enter into a purchase agreement with the applicant.

FINANCIAL IMPACT:

The City will see increased revenue from the sale of the lots.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommend approval of the sale.

COMMITTEE RECOMMENDATION:

None

True Cash Values:
Lot 1 - $190,750
Lot 2 - $28,000

8/10/18

MTC ENTERPRISES
1135 E. Alward Rd.
DeWitt, MI 48820
(517) 290-7385
markslandman@gmail.com

July 24, 2018

Mike Franzak
City Planning Department #202
Muskegon City Hall
933 Terrace Street
Muskegon, MI 49443

Dear Mike Franzak; RE: Seaway Industrial Park Proposal

Mark Schneider, president of MTC Enterprises of Michigan Inc., respectfully is offering $300,000 (Three Hundred thousand) for Lots 1 & 2 of the Seaway Industrial Park.

This offer is contingent upon attorney approval of unencumbered Title and MTC's ability to obtain State and local licensing for a Provisioning Center and Cultivation building on these lots within 120 days of City acceptance of this proposal.

If MTC or Mark Schneider needs additional time to obtain licencing and all necessary approvals to construct the proposed Provisioning Center and Cultivation buildings on these lots MTC agrees to pay the City of Muskegon $3,000 (Three Thousand dollars) per month non-refundable but credited to the purchase price at closing for the additional time needed for all approvals and licensing to operate a Provision Center and Cultivation business.

Mark Schneider plans to construct a 2500 square foot building for a Provisioning Center in the spring of 2019 on one lot and a Cultivation or Processing building of approximately 60,000 square feet in the fall of 2019. All buildings will comply with City ordinances and regulations.

If MTC is not able to obtain these licenses and approvals MTC may elect not to purchase the property and there will be no further obligation by either party.

If the city of Muskegon accepts the above price and terms then both parties agree to execute a purchase agreement.

We estimate approximately 22 employees, including security for the Provisioning Center and approximately 70 employees for the Cultivation and or Processing Center.

QUALIFICATIONS

MTC and Mark Schneider have vast business experience in growing nursery and christmas trees, a variety of hot peppers, vegetables and medical marijuana.

Mark Schneider owns Michigan Tree and Produce and has grown over 320,000 trees in Mesick, Buckley and Lansing area farms since 1977.

Mark schneider also has 26 years experience in land acquisition and Development. He worked for Management Resources in East Lansing, Michigan during that time and purchased for them sites for apartments and off base military housing in 14 states. He was responsible for obtaining the property and all necessary government approvals for construction. The company's web site is MRD Apartments.com and MRD Military Housing.com

He has developed many Industrial and Commercial subdivisions. In 1994 he developed Greater Lansing Industrial Park.

The Ochomogo Industrial Park in Costa Rica is currently being developed.

He recently sold 32 acres known as US 31 Industrial Park in Benzonia, Michigan for a medical marijuana campus to be developed by the purchaser.

Mark is representing the Industrial medical marijuana property in Kingsley, Michigan and plans to co-develop it with the owner.

Mark Schneider obtained his caregiver license in **2009** and has grown plants for patients according to Michigan laws and has kept all licenses current.

Mark Schneider owns C&M Investments, EMO Hawk LLC, TKM, Michigan Tree and Produce and Ochomogo Industrial Park (Costa Rica). (Please see attached Financial Statement)

Thank you for your consideration.

Sincerely,

Mark Schneider

encls

MARK SCHNEIDER

STATEMENT OF FINANCIAL CONDITION

December 31, 2017

ASSETS	
Cash in Bank	$ 36,000
Rare Coins	76,000
Collectibles	87,600
Accounts Receivables	94,200
Notes Receivables	266,000
Investments in Closely Held Businesses	
C & M Investments, Inc	792,000
EMO Hawk Enterprises, LLC	378,000
MTC Enterprises of Michigan, Inc	120,000
TKM Investments	899,000
Ochomogo Corporation	1,173,000
Michigan Tree & Produce, LLC	82,000
Real Estate	
Residence	675,000
Vehicles	39,750
Farm Equipment	24,000
Total Assets	$ 4,742,550
LIABILITIES	
Mortgage Payable - Residence	$ 152,000
NET WORTH	4,590,550
Total Liabilities & Net Worth	$ 4,742,550

Date: August 14, 2018

To: Honorable Mayor and City Commission

From: Department of Public Works

RE: Launch Ramp Ordinance Change

SUMMARY OF REQUEST: To amend Chapter 58 Parks and Recreation ordinance to clarify daily and annual launch ramp permit parameters, vessel and trailer size restrictions, and commercial use of city of Muskegon launch ramps.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Approve the modified language for the ordinance.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. _____

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Section 58-3 is amended to read as follows:

58-3. **Public boat launch permit; violation as a municipal civil infraction.**

No person shall launch a vessel at city launch ramp facilities without a permit from the city. Daily permits are valid for the 24-hour period of the date purchased and must be clearly displayed on the vehicle dashboard with date and permit number visible from outside the vehicle. Annual permits are valid for the calendar year in which it was purchased for the launching of vessels at city launch ramp facilities. The annual permit must be fully adhered to the vehicle windshield and completely visible from the outside of the vehicle used to launch the vessel.

Vessels larger than thirty-feet, or those transported on a trailer with three or more axles, shall not use City of Muskegon launch ramp facilities. Pontoon boats are excluded.

Private or for-profit businesses may launch commercial vessels from city launch ramp facilities with a commercial launching permit issued by the City of Muskegon. Each permit is valid for the calendar year in which it was purchased, for vessels up to thirty-feet in length, and transported on a trailer with one or two axles. Pontoon boats excluded.

Permits are non-transferable and may not be re-sold, with the exception that permits will be transferable between vehicles owned by the permit purchaser for business purposes and must be visible from outside the vehicle. Violations of this section shall be a municipal civil infraction.

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 adopted:

Ayes: ____
Nays: ____

Adoption Date: ________________________

Effective Date: _________________________

First Reading: _________________________

Second Reading: ________________________

CITY OF MUSKEGON

By __________________________
Ann Marie 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 _____ day of _______________, 2018, 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 an in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____________, 2018

____
Ann Marie 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

TO: ALL PERSONS INTERESTED

Please take notice that on _________________ ______, 2018, the City Commission of the City of Muskegon amended Chapter 58, Article I by amending Sections 58-3.

> Section 58-3 has been amended to allow for the purchase of a 24-hour or annual permit to launch vessels at city launch ramp facilities. It is required that the permits be properly adhered to the windshield or dashboard of the vehicle for complete visibility. Additionally, vessels larger than thirty-feet, or vessels transported on a trailer with three or more axles, are prohibited from being launched at city launch ramp facilities, pontoon boats excluded. Transferring or selling permits between individuals, except for the transfer of permits between vehicles owned by the permit purchaser for business purposes, is prohibited.

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

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

CITY OF MUSKEGON

Published: _________________, 2018

By: ______________________________
Ann Marie Meisch, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Date: August 6th, 2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: City Survey Services

SUMMARY OF REQUEST:

Authorize staff to enter into an engineering services agreement with Fleis & VandenBrink Engineering to provide survey services for upcoming projects. The value of the agreement shall not exceed $27,110.00

Requests for Proposals were solicited for this contract with Westshore Consulting and Fleis & VandenBrink Engineering submitting proposals. Both proposals were reviewed by staff and the Fleis & VandenBrink proposal is recommended.

FINANCIAL IMPACT:

Not to exceed $27,110.00

BUDGET ACTION REQUIRED:

None. Contract will be funded out of capital projects included in the 2018/2019 budget.

STAFF RECOMMENDATION:

Authorize staff to enter into an engineering services agreement with Fleis and VandenBrink Engineering.

City Survey Services - Proposal Bids Comparisson

RFP Received - 8/3/2018

RFP Reviewed - 8/6/2018

Commission Consent Agenda - 8/14/18

Lump Sum Guaranteed Tasks:	Fleis & VandenBrink	Westshore Consulting
Olthoff Drive & Sheridan Drive - Road Survey	$12,800.00	$24,900.00
SUBTOTAL (Guaranteed Items)	***$12,800.00***	***$24,900.00***

Lump Sum Optional Tasks:		
Marsh Street / Walton Avenue - Road Survey	$2,980.00	$5,800.00
3rd Street (Merril to Muskegon) - Road Survey	$2,980.00	$7,200.00
SUBTOTAL (Optional Items)	***$5,960.00***	***$13,000.00***

As-Needed Hourly Tasks:		
1 Man Field Crew	$160.00	$110.00
2 Man Field Crrew	$245.00	$130.00
3 Man Field Crew	$330.00	$150.00
Office Rate / Processing	$100.00	$85.00
SUBTOTAL (Based on 10 Hours Each Item)	***$8,350.00***	***$4,750.00***

GRAND TOTAL	***$27,110.00***	***$42,650.00***

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Landscaping

SUMMARY OF REQUEST:

Authorize staff to enter into a landscaping agreement at Water Filtration Plant with Weesies Brothers Garden Center since they submitted the lowest responsible bid of $35,495.

FINANCIAL IMPACT:

$35,495.

BUDGET ACTION REQUIRED:

The project is funded in FY 2018-19.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Weesies Brothers Garden Center for a cost of $35,495.

CITY OF MUSKEGON

BID TABULATION

PROJECT: **WATER FILTRATION PLANT- MEMBRANE ON CLEARWELLS - LANDSCAPING**

DATE: 29-Jul-18

REQUISTION LANDSCAPING

		Name of Bidder		Name of Bidder		Name of Bidder	
	Vendor	**Landscape Design Services**		**Weesies Brothers Landscaping**			
	Telephone	616-399-1734		231-206-5513			
	Quoted By	Bob Sterling		Juli Beushuizen			
Quantity	Description	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
	1. Install Sod		$ 29,075.00		$ 27,950.00		
	2. Install Hydro-Seed		$ 3,115.00		$ 3,200.00		
	3. Maintenance Strip-Vents		$ 1,182.00		$ 1,775.00		
	4. Maintenance Strip-Front		$ 2,058.00		$ 2,235.00		
	5. Aluminum Edging		$ 4,856.74		$ 4,085.00		
	6. Install Patio		$ 8,932.81		$ 8,300.00		
	7. Install Lighting		$ 10,513.25		$ 5,750.00		
	8. Standard Finish Grading		$ 1,725.00		$ 950.00		
	9. Install Irrigation		$ 9,775.00		$ 9,200.00		
	Option: Maintenance Strip-Fence				$ 5,050.00		
	Option: CCT or RGB Bulbs		No Charge		$ 55.00		
TOTAL (Items 2 to 9), **Hydro seed option**			**$ 42,157.80**		**$ 35,495.00**		**$ -**

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Fence Replacement

SUMMARY OF REQUEST:

Authorize staff to enter into a fence replacement agreement at Water Filtration Plant with Justice Fence since they submitted the lowest responsible bid of $89,500.

FINANCIAL IMPACT:

$89,500.

BUDGET ACTION REQUIRED:

The project is funded in FY 2018-19.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Justice Fence for a cost of $89,500.

CITY OF MUSKEGON

BID TABULATION

PROJECT: **WATER FILTRATION PLANT- MEMBRANE ON CLEARWELLS - FENCE**

DATE: 29-Jul-18

REQUISTION FENCING

		Name of Bidder		Name of Bidder		Name of Bidder	
	Vendor	**Affordable Fence Co. Inc.**		**Justice Fence**		**West Michigan Fence Consultants**	
	Telephone	231-736-2264		269-964-1596		616-438-2084	
	Quoted By	Al Luke		Richard Ostrander		Wayne Allen	
Quantity	Description	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
	Fence Replacement		$ 118,994.29		$ 89,500.00		$ 101,793.00
TOTAL			**$ 118,994.29**		**$ 89,500.00**		**$ 101,793.00**

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Excavating

SUMMARY OF REQUEST:

Authorize staff to enter into an excavating agreement at Water Filtration Plant with Jackson-Merkey Contractors since they submitted the lowest responsible bid of $88,365.

FINANCIAL IMPACT:

$88,365.

BUDGET ACTION REQUIRED:

The project is funded in FY 2018-19.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Jackson-Merkey for a cost of $88,365.

CITY OF MUSKEGON

BID TABULATION

PROJECT: **WATER FILTRATION PLANT- MEMBRANE ON CLEARWELLS - EXCAVATION**

DATE: 29-Jul-18 REQUISTION EXCAVATING

		Name of Bidder		Name of Bidder		Name of Bidder	
	Vendor	**Jackson Merkey**		**Swidorski Bros. Excavating**		**Terra Contractors**	
	Telephone	231-728-9344		231-723-7244		231-755-4450	
	Quoted By	Brian Delong		Paul Swidorski		Scott Drier	
Quantity	Description	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
	Excavating		$ 88,365.00		$ 98,200.00		$ 105,000.00
TOTAL			**$ 88,365.00**		**$ 98,200.00**		**$ 105,000.00**

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Membrane Roof on Clearwells

SUMMARY OF REQUEST:

Authorize staff to enter into a roof installation agreement on clearwells at Water Filtration Plant with Ostrander Roofing since they submitted the lowest responsible bid of $440,000.

FINANCIAL IMPACT:

$440,000.

BUDGET ACTION REQUIRED:

The project is funded in FY 2018-19.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Ostrander Roofing for a cost of $440,000.

CITY OF MUSKEGON

BID TABULATION

PROJECT: **WATER FILTRATION PLANT- MEMBRANE ON CLEARWELLS - ROOF**

DATE: 29-Jul-18 REQUISTION ROOFING

		Name of Bidder		Name of Bidder		Name of Bidder	
	Vendor	**Bob's Roofing**		**IRT Commercial Services**		**Ostrander Roofing**	
	Telephone	231-510-8311		616-438-2084		616-240-0553	
	Quoted By	Jeremy Novak		Kevin Hole		Richard Ostrander	
Quantity (sq.ft)	Description	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
30,000	Base Bid	$ 11.304	$ 339,120.00	$ 12.50	$ 375,000.00	$ 11.00	$ 330,000.00
10,000	Additional	$ 11.300	$ 113,000.00	$ 12.50	$ 125,000.00	$ 11.00	$ 110,000.00
TOTAL			**$ 452,120.00**		**$ 500,000.00**		**$ 440,000.00**

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Salt Box

SUMMARY OF REQUEST:

The Equipment Division is requesting permission to purchase one (1) Salt Box from Arista Truck Systems, Inc. This unit was ordered by another community that could not complete the sale, therefore, Arista is offering this unit at a considerable discount. The price of this unit is $14,999.00 compared to $18,807.00 a savings of $3,808.00

FINANCIAL IMPACT:

$14,999.00

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Salt Box from Arista Truck Systems, Inc.

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Concrete Breaker

SUMMARY OF REQUEST:

The Equipment Division is requesting permission to purchase one (1) Concrete Breaker from Midland Engine the lowest qualified bidder.

FINANCIAL IMPACT:

$12,500.00

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Concrete Breaker from Midland Engine.

HAMMERS

Rammer®

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Back Hoe

SUMMARY OF REQUEST:

The Equipment Division is requesting permission to purchase one (1) Back Hoe from Michigan Cat for a purchase price of $97,053.61. With our buyback program, Michigan Cat is the most cost effective machine to buy.

FINANCIAL IMPACT:

$97,053.00

BUDGET ACTION REQUIRED:

None. Amount is what was budgeted.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Back Hoe from Michigan Catapillar.


CAT
SKR3404
CAT
420F
J A RIGGS TRACTOR

AGENDA ITEM NO. ________________
CITY COMMISSION MEETING ____________________________

TO: Honorable Mayor and City Commissioners

FROM: Mayor's Office

DATE: August 9, 2018

RE: City Manager Employment Agreement

SUMMARY OF REQUEST:
Approval of the Agreement as submitted

FINANCIAL IMPACT:
None

BUDGET ACTION REQUIRED:
None at this time.

STAFF RECOMMENDATION:
To approve the employment agreement and authorize the Mayor and Clerk to sign.

COMMITTEE RECOMMENDATION:
None.

EMPLOYMENT AGREEMENT

CITY OF MUSKEGON – FRANKLIN PETERSON
Effective July 1, 2018

This employment agreement is made and entered into by and between the CITY OF MUSKEGON ("CITY") and FRANKLIN PETERSON ("MANAGER").

Recitals

A. The CITY desires to continue the employment of MANAGER as the City Manager of the City of Muskegon as provided in the Charter of the City of Muskegon and desires to establish conditions of employment, provide certain benefits and set working conditions for said MANAGER.

B. MANAGER desires to continue his employment as City Manager of the City of Muskegon in accordance with the terms and provisions of the Agreement.

C. This Agreement supersedes all prior agreements.

Agreement

NOW THEREFORE, THE CITY AND MANAGER AGREE AS FOLLOWS:

1. EMPLOYMENT. CITY employs MANAGER as City Manager to perform the functions and duties specified in the City Charter and ordinances and to perform such other legally permissible and proper duties and functions as the City Commission may, from time to time, assign, and MANAGER accepts such employment.

MANAGER agrees to remain in the employment of the CITY until termination is effected as hereinafter provided. MANAGER agrees to devote full time to his duties as City Manager and may undertake other incidental employment, subject to the right of the City to require Manager to terminate other incidental employment.

2. SALARY. Effective July 1, 2018, CITY agrees to pay MANAGER as compensation for services rendered, an annual salary of $140,000 per year. MANAGER shall be entitled to cost of living adjustments approved by the City Commission for department heads on the first of each year, commencing January 1, 2019, and a merit adjustment will be considered and, if granted, would be effective July 1 of each year, commencing July 1, 2019.

3. FRINGE BENEFITS. In addition to the base salary, CITY shall afford MANAGER the fringe benefits provided for as follows:

3.1 **Longevity Pay**: MANAGER commits not to increase his student loan debt. City shall open an EdAssist account for MANAGER. City shall pay $600 per month to MANAGER'S student loan servicer. If MANAGER maintains his employment with the City through June 30, 2023 and is employed on June 30, 2023, City shall fully discharge the remaining MANAGER'S student loan debt, but not to exceed $33,000.

3.2 **Health Insurance**: City shall provide the same HMO health insurance plan provided to other department heads. MANAGER shall contribute toward the health insurance premium at the same rate as other department heads and follow the same wellness program required of other department heads. MANAGER may opt out of the health insurance and receive an annual stipend equal to the stipend offered to other department heads.

3.3 **Disability Insurance**: City provides short-term and long-term (60% of pre-disability earnings) disability insurance.

3.4 **Life, Vision and Dental Insurance**: City provides life insurance (200% of base salary to a maximum of $200,000), vision insurance, and dental insurance.

3.5 **Flexible Spending Account**: Employees may contribute pre-tax income to a flexible spending account for medical and dependent care.

3.6 **Health Care Savings Plan**: City offers a Health Care Savings Plan. There is a mandatory 2% employee pre-tax contribution and a 2% City match.

3.7 **Defined Contribution Plan**: City provides a defined contribution plan through the Municipal Employees Retirement System (MERS). There is a mandatory employee contribution of 3% and a City contribution of 15.23% of W-2 wages.

3.8 **Holidays**: City offers the standard 11 recognized holidays.

3.9 **Vacation Time**: City will credit 30 vacation days to MANAGER'S vacation bank effective January 1, 2018. 20 days can be carried over from one year to the next.

3.10 **Personal Leave**: City grants 2 personal leave days per year, which cannot be carried over from one year to the next.

3.11 **Sick Leave**: Sick leave is earned at 3.6923 hours bi-weekly (12 days per year). Sick leave may be accumulated to a maximum of 132 days. Once an employee has accumulated 160 hours, an employee may be paid (50%) or deposit into a deferred compensation plan, ROTH IRA or Michigan Education Savings Plan (100%). There are certain restrictions on the payout.

3.12 **Bereavement Leave and Jury Duty Leave** is provided.

3.13 **Membership Dues**: City will pay membership dues to Michigan Municipal League Local Government Management Association, ICMA membership, and one civic organization. City will reimburse expenses to attend the two Michigan Municipal League conferences, the ICMA annual conference and ICMA conferences in the state.

In addition to the fringe benefits set forth above, and to the extent that this paragraph does not duplicate or conflict with the above paragraph which shall prevail, the MANAGER shall have the same fringe benefits as are available to the highest level department heads employed by the CITY from time to time.

4. TERM. It is understood by both CITY and MANAGER that employment may be terminated at the will of either party.

5. SEVERANCE PAY UPON TERMINATION BY CITY. If CITY terminates MANAGER'S employment without "cause", or if termination occurs pursuant to section 7 (except the last paragraph thereof), MANAGER shall receive the following:

a) severance pay in an amount equal to twelve (12) months salary; and

b) 50% of any unused sick leave pay and 100% of any unused vacation time pay.

"Cause" is defined as i) conduct involving harm, even nominal, or threats to the City or its employees, elected officials, customers, residents, or others with an actual or potential relationship with the City; ii) conduct that could damage, serious or not, or the City's image; iii) conduct that reasonably makes it difficult or impossible for City employees, elected officials, customers, residents, or others with an actual or potential relationship with the City to deal with the City; or iv) public attacks, physical or verbal, on the City or its employees, elected officials, customers, residents, or others with an actual or potential relationship with the City.

If termination is for "cause", MANAGER is not entitled to the severance pay or pay for unused sick leave or vacation time.

6. <u>TERMINATION OF EMPLOYMENT BY MANAGER</u>. MANAGER may terminate employment at any time after providing the CITY with a thirty (30) day notice.

7. <u>SEVERANCE PAY UPON TERMINATION BY MANAGER</u>. In the event the CITY refuses, following written notice, to comply with any material provisions of this agreement which would financially benefit MANAGER, or MANAGER resigns following the simultaneous suggestion, whether formal or informal, by a majority of the members of the City Commission that MANAGER resign without "cause" to terminate employment, then, in that event, the MANAGER may at his option be deemed to be terminated without "cause" at the date of such failure to comply or simultaneous suggestion. In such case, the MANAGER shall be deemed to have been terminated by the CITY without "cause" and entitled to the severance benefits set forth above.

In the event the MANAGER terminates his employment for reasons other than those stated in this paragraph, he shall receive fifty percent (50%) of his unused sick leave bank and all unused vacation pay, but no other severance pay or benefit, except as required by law.

8. <u>MERGER OF NEGOTIATIONS</u>. This agreement constitutes the entire contract of employment between CITY and MANAGER. No statement, promise, agreement, or obligation that conflicts with the terms of this agreement shall modify, enlarge, or invalidate this agreement or any provisions hereof.

IN WITNESS WHEREOF, the CITY and MANAGER have executed this agreement this ______ day of _____________, 2018.

CITY OF MUSKEGON

By___________________________________
Stephen J. Gawron, Its Mayor

and___________________________________
Ann Marie Meisch, Its Clerk

MANAGER

____
Franklin Peterson

Date: August 10, 2018

To: Honorable Mayor and City Commissioners

From: Ann Marie Meisch, City Clerk

RE: Adopt a Resolution Approving the Liquor License Application for Pigeon Hill Brewing Company, LLC

SUMMARY OF REQUEST: To adopt a resolution approving the request for a Liquor License for Pigeon Hill Brewing Company, LLC to be licensed as a Micro Brewer, Small Wine Maker, Manufacturer of Mixed Spirit Drink, and Small Distiller.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt a resolution approving the request.

Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll-Free: 866-813-0011 - www.michigan.gov/lcc

Business ID: ____________
Request ID: ____________
(For MLCC Use Only)

Manufacturer & Wholesaler License & Permit Application

For information on manufacturer and wholesaler licenses and permits, including a checklist of required documents for a completed application, please visit the Liquor Control Commission's frequently asked questions website by clicking this link.

Part 1 - Applicant Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it is filed with the State of Michigan Corporation Division.

Applicant name(s): Pigeon Hill Brewing Company, LLC	
Address to be licensed: 895 Fourth St	
City: Muskegon	Zip Code: 49440
City/township/village where license will be issued: City of Muskegon	County: Muskegon County
Federal Employer Identification Number (FEIN):	

Leave Blank - MLCC Use Only

1. Are you requesting a new license? (●) Yes ( ) No
2. Are you applying ONLY for a new permit or permission? ( ) Yes (●) No
3. Are you buying an existing license? ( ) Yes (●) No
4. Are you modifying the size of the licensed premises? ( ) Yes (●) No
   If Yes, specify: ☐ Adding Space ☐ Dropping Space ☐ Redefining Licensed Premises
5. Are you transferring the location of an existing license? ( ) Yes (●) No
6. Is this license being transferred as the result of a default or court action? ( ) Yes (●) No
7. Do you intend to use this license actively? (●) Yes ( ) No

Part 2 - License Transfer Information (If Applicable)

If transferring ownership of a license ONLY and not transferring the location of a license, fill out only the name of the current licensee(s)

Current licensee(s):	
Current licensed address:	
City:	Zip Code:
City/township/village where license is issued:	County:

Part 3 - Licenses, Permits, and Permissions

Applicants for Manufacturer & Wholesaler licenses, permits, and permissions must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

Part 4 - Inspection, License, and Permit Fees - Make checks payable to **State of Michigan**

Inspection Fees - Pursuant to MCL 436.1529(4) a nonrefundable inspection fee of $70.00 shall be paid to the Commission by an applicant or licensee at the time of filing of a request for a new license or permit, a request to transfer ownership or location of a license, or a request to increase or decrease the size of the licensed premises. Requests for a new permit in conjunction with a request for a new license or transfer of an existing license do not require an additional inspection fee.

License and Permit Fees - Pursuant to MCL 436.1525(1), license and permit fees shall be paid to the Commission for a request for a new license or permit or to transfer ownership or location of an existing license.

Inspection Fees:	License & Permit Fees:	**TOTAL FEES:**

Schedule A - Licenses, Permits, & Permissions

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

License Type:	Base Fee:	Fee Code MLCC Use Only
☐ Brewer	$50.00	
☒ Micro Brewer (Under 60,000 barrels annually)	$50.00	
☐ Wine Maker	$100.00	
☒ Small Wine Maker (Under 50,000 gallons annually)	$25.00	
☐ Winery Tasting Room	$100.00	
☐ Spirit Tasting Room	$100.00	
☐ Brandy Tasting Room	$100.00	
☐ Manufacturer of Brandy	$100.00	
☒ Manufacturer of Mixed Spirit Drink	$100.00	
☐ Manufacturer of Spirits	$1,000.00	
☒ Small Distiller (Under 60,000 gallons annually)	$100.00	
☐ Outstate Seller of Beer	$1,000.00	
☐ Outstate Seller of Wine	$300.00	
☐ Outstate Seller of Mixed Spirit Drink	$300.00	
☐ Wholesaler	$300.00	

For delivery vehicle decal fees please use Report of Delivery Vehicles form (LCC-351).

☐ Warehouser	$50.00	
☐ Industrial Manufacturer	$10.00	
☐ Seller of Alcohol	$10.00	
☐ Limited Alcohol Buyer	$10.00	
☐ Consumer Sampling Event License	No charge	

*Sunday Sales Permit (AM) allows the sale of liquor, beer, and wine on Sunday mornings between 7:00am and 12:00 noon, if allowed by the local unit of government.

**Sunday Sales Permit (PM) allows the sale of liquor on Sunday afternoons and evenings between 12:00 noon and 2:00am (Monday morning), if allowed by the local unit of government. No Sunday Sales Permit (PM) is required for the sale of beer and wine on Sunday after 12:00 noon. The Sunday Sales Permit (PM) fee is 15% of the fee for the license that allows the sale of liquor. Additional bar fees and B-Hotel room fees are also calculated as part of the permit fee.

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

Permits:	Base Fee:	Fee Code MLCC Use Only
☐ Sunday Sales Permit (AM)	$160.00	
☐ Sunday Sales Permit (PM)	15%**	
☐ Catering Permit	$100.00	
☐ Beer and Wine Tasting Permit	No Charge	
☐ Outdoor Service	No Charge	
☐ Entertainment Permit	No Charge	
☐ Dance Permit	No Charge	
☐ Topless Activity Permit	No Charge	
☐ Living Quarters	No Charge	
☐ Specific Purpose Permit (list activity below):		
Days/Hours requested: ______		
☐ Extended Hours Permit (check type below): ○ Dance ○ Entertainment	No Charge	
Days/Hours requested: ______		
☐ Off-premise Storage	No charge	
☐ Direct Connection(s)	No charge	

Inspection, License, Permit, & Permission Fee Calculation

Number of Licenses: ____ x $70.00 Inspection Fee

Total Inspection Fee(s): ______

Total License Fee(s): ______

Total Permit Fee(s): ______

TOTAL FEES DUE: ______

Make checks payable to **State of Michigan**

AGENDA ITEM NO. _______________
CITY COMMISSION MEETING __________________________

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: August 9, 2018

RE: Arena Lease and Management Agreement - Rad Dad's

SUMMARY OF REQUEST:
City staff is requesting approval of the attached lease agreement and corresponding management agreement for the operations of Rad Dad's Tacos and Tequila in the LC Walker Arena.

FINANCIAL IMPACT:
None

BUDGET ACTION REQUIRED:
None at this time.

STAFF RECOMMENDATION:
To approve the agreements and authorize the Mayor and Clerk to sign.

COMMITTEE RECOMMENDATION:
None.

PARTICIPATING MANAGEMENT AGREEMENT

This Participating Management Agreement is entered into as of **___________**, 2018 (the "Effective Date"), between **City of Muskegon**, a Michigan municipal corporation, of 933 Terrace St., Muskegon, Michigan 49440 (the "Owner"), and **RAD DAD'S L.L.C.**, of 470 W. Western Ave., Muskegon, MI 49440 (the "Manager"), with reference to the following facts:

Background

A. The Owner desires to hire a manager to oversee the business activities of the Owner's alcohol operations (the "Business") within the leased premises located in the south-east corner of the LC Walker Arena located at 470 W Western Ave., Muskegon, MI 49440 (the "Location"), which is currently leased to Manager. Owner holds the following licenses and permits issued by the Michigan Liquor Control Commission ("MLCC"): Class C Liquor License # L-000001962 together with related permits for Sunday Sales, Dance-Entertainment, Food Service, Additional Bars, and Outdoor Service (collectively, the "License").

B. The Manager desires and is willing to assume the duties and obligations of the management of the Business at the Location;

C. The Parties desire to enter into a written agreement stating the duties and obligations of the Manager in the lawful management of the Owner's Business;

D. The Parties acknowledge that this Agreement is subject to the approval and consent of the MLCC.

Therefore, for good and valuable consideration, the parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to establish provisions regulating the everyday management and operation of the activities of Owner's Business (in the ordinary course of business), and define the duties and obligations of the Manager.

2. **Engagement of Services.** The Owner engages the Manager during the Term (as defined in paragraph 3), and Manager agrees to accept the terms and conditions as provided in this Agreement.

3. **Term.** The term of this Agreement shall be for one (1) year from the Effective Date ("Term"), unless terminated sooner pursuant to the terms of this Agreement. The Term may be modified, provided that the modification is in writing, executed by the Parties, and a copy of the modification is provided to the MLCC.

4. **Consideration.** Manager shall receive 10% of the net profit of the Business, paid on a monthly basis. Manager shall provide Owner monthly reports of the profit of the Business in a form acceptable to Owner. The Consideration as provided in this Agreement is subject to the approval of the MLCC.

5. **Responsibility.** The Owner shall remain responsible for the conduct and operation of the licensed Business and the actions of the Manager as they relate to the management and conduct of the licensed Business. Such responsibility shall be the same as the Owner has for the actions of any other employee.

6. **Liability and Control.** The Owner shall not in any way assign or transfer to Manager:

a. Owner's liability for Owner's existing contracts, including by way of example and not limitation, rental and lease agreements, utility bills, taxes, or other licensing costs and expenses, either as required or that are incidental to the operation of the Business; and

b. Owner's obligations and duties that are necessary for the retention of the "incidents of ownership" and control of the Business by the Owner.

7. **Duties.** The Manager shall have the following duties on behalf of and for the benefit of Owner:

a. To manage and operate the Business under its name or legally adopted assumed name at the Location.

b. To negotiate contracts for the purchase of merchandise inventory, alcoholic beverages, and stock, provided, however, that all alcoholic beverage purchases are subject to the approval of Owner.

c. To purchase merchandise inventory, alcoholic beverages, and stock out of the income of the Business to facilitate its daily operations, provided, however, that all alcoholic beverage purchases are subject to the approval of Owner.

d. To hire or dismiss employees as necessary to run the everyday operations of the Business.

e. To oversee and arrange for the following:

i. Payment in a timely manner of all taxes related to the operation of the Business, including, but not limited to, Employment, Unemployment, Sales, and Payroll Taxes.

ii. Timely filing and payment of all reports, returns, and all associated liability payments.

iii. On a monthly, quarterly, and/or annual basis, the Manager shall provide to the Owner copies of the required tax returns prior to the due date, along with the check for payment or proof of payment.

Provided, however:

i. The payment of the Owner's Business' tax liability resulting from net profit during the Term of this Agreement shall be paid out of the gross proceeds of the Business by the Manager; and

ii. Manager shall have no duty to file the Owner's annual tax returns required by the various governmental agencies.

f. To manage and operate the Business in a business-like manner governed by a first class restaurant standard.

g. To pay all maintenance and repair costs or other expenses related to the everyday operation of the Business, including payment of all creditors, on behalf of Owner out of the gross operating income, including rental payments.

h. To cause the Business to be operated during all regularly scheduled hours of the day and during all normal operating days of the week.

i. To maintain inventory of beverages adequate for the normal conduct of the activities of the Business.

j. To operate the activities of the Business in the best interests of the Owner.

k. To comply with all municipal, state, and federal laws, rules, and regulations, and particularly the laws, rules, and regulations administered by, and subject to, the jurisdiction of the MLCC.

l. To cooperate at all times, fully and completely, with the accountant for the Business; keeping and maintaining the books of account and records of the activities of the Business that are fully correct, accurate, and consistent with the directions given by the accountant for the Business.

m. To deposit all receipts, in whatsoever form, from the activities of the Business in the bank or other financial institution depository as designated by the Owner, and in the Owner's name.

n. To perform such other and further duties that are consistent with the management of the activities of the Business or that shall be directed by the Owner.

o.

8. **Insurance.** Manager shall indemnify Owner and save Owner harmless from any liability or claim for damages that may be asserted against Owner (including attorney fees) by reason of any accident or casualty occurring on or about the Location. Manager shall, at its own cost and expense, obtain and keep in force a policy or policies of public liability insurance with an insurance company approved by Owner, with liability coverage of an amount as recommended by Owner's insurance agent that, for the initial coverage, shall be not less than $1,000,000 for injury or death to any one person, $3,000,000 for injury or death to more than one

person, and $1,000,000 regarding damage to property, and not less than $1,000,000 in liquor liability (dram shop) coverage. Manager shall furnish Owner with certificates or other evidence acceptable to Owner indicating that the insurance is in effect and providing that Owner shall be notified in writing at least 30 days before cancellation of any material change in or renewal of the policy. All insurance policies shall name Owner and any persons designated by Owner as insured parties. Any insurance policy maintained by Manager shall include a clause or endorsement under which Manager waives its rights of subrogation against Owner.

9. **Termination.** This Agreement may be terminated by either the Manager or the Owner upon 60 days written notice to the other party. All written notices shall be personally delivered to the other Party, or, in lieu of personal service, registered mail with return receipt requested may be used for the notices, which shall be mailed to the mailing addresses of the Parties listed on the first page of this Agreement. Notwithstanding anything in this Agreement to the contrary, Owner may terminate this Agreement immediately, without notice, in the event Manager breaches any of the terms of this Agreement, or through its actions or inactions, causes Owner's License to be in jeopardy with the MLCC.

10. **Covenants Regarding Ownership.**

a. The Owner shall retain the "incidents of ownership" as required by the MLCC; however, the daily management decisions shall be made by the Manager, subject to the terms of this Agreement.

b. The Manager shall not in any way represent Manager to be the Owner or licensee of the MLCC, and shall in no way attempt to injure or harm the Business, its reputation, or goodwill.

11. **Covenants Regarding Inventory.** In connection with the inventory, the Parties agree as follows:

a. The Manager and Owner shall arrange to have an inventory taken of the merchandise and alcoholic beverages prior to the Manager assuming its duties.

b. During the Term of this Agreement, the inventory shall be maintained in a wholesale amount equal to when the Manager took control of the business.

12. **Approval by MLCC.** This Agreement is conditioned on the Parties obtaining approval by the MLCC. The Parties shall take all steps that are reasonably necessary to obtain its approval by making a request to the MLCC. In the event the MLCC does not approve this Agreement, the Parties shall terminate this Agreement. However, if the MLCC requests modifications to this Agreement as a precondition to its approval, the Parties may either (i) agree to adopt such modifications that do not substantively affect their rights under this Agreement, or (ii) elect to terminate this Agreement.

13. **Miscellaneous.**

a. This Agreement is entered into on the date first set forth above, and shall be binding on the Parties, their heirs, assigns, or successors in interest, and shall be interpreted pursuant to the laws of the State of Michigan.

b. This Agreement may not be modified unless in writing, signed by the Parties.

c. The paragraph headings are solely for convenience, and shall not be used to effect or interpret the terms or intent of this Agreement.

d. If the pronouns and relative words used are written in the masculine and singular, and more than one person joins in the execution as Owner or Manager, or if either party is of the feminine sex, a partnership, or a corporation, then such words shall be read as if written in the feminine, plural, or neuter, respectively.

e. In the event of a breach of this Agreement, Manager consents to Owner obtaining injunctive relief, and Owner shall be entitled to its actual costs and attorney fees from Manager in enforcing this Agreement.

The Parties have executed this Agreement on the date(s) set forth below, to be effective as of the Effective Date.

MANAGER:

RAD DAD'S, L.L.C.

By: ______________________________
Name: ______________________
Title: ______________________
Date: ______________________

OWNER:

CITY OF MUSKEGON

By: ______________________________
Name: ______________________
Title: ______________________
Date: ______________________

LEASE

This lease ("Lease"), is made effective as of May 1, 2018 (Effective Date") by and between the **City of Muskegon**, a Michigan municipal corporation, 933 Terrace Street, Muskegon, MI 49440 ("City" or "Landlord"), and **Rad Dad's, L.L.C.**, a Michigan limited liability company, of 470 W. Western Ave., Muskegon, MI 49440 ("Tenant").

BACKGROUND

A. City is the owner of the L.C. Walker Arena and Conference Center located at 470 West Western Avenue, Muskegon, Michigan 49440 ("Arena").

B. Tenant desires to lease from City, and City desires to lease to Tenant, a portion of the Arena to operate a full service restaurant. City owns a liquor license for the Arena, (Class C License No. 1962-2015 issued by the Michigan Liquor Control Commission ("Liquor License")), and is willing to allow Tenant to use the Liquor License under a management agreement, based on the terms and conditions contained herein, and consent of the Michigan Liquor Control Commission.

AGREEMENT

1. **Description of Premises and Leased Premises**. In consideration of the rents and covenants to be paid, performed and observed by Tenant, Landlord leases to Tenant and Tenant accepts from Landlord 3,749 square feet of indoor space and 900 square feet of outdoor space, as depicted on the drawing attached as **Exhibit A** ("Leased Premises") in what is commonly known as the LC Walker Arena, including the Annex located at 470 W. Western Ave., Muskegon, MI 49440 as legally described on **Exhibit B** and consisting of 59,847 square feet ("Premises").

2. **Term**. The initial term of this lease shall be for 5 years, with three 3 year options, which may be exercised by Tenant providing Landlord with written notice of such not less than ninety (90) days from the expiration of the application term or option. The first day of the term is the Effective Date. Each renewal period shall be on the same terms and conditions as this Lease. After the initial 5 year term, Rent (as defined below) shall increase by 2% per lease year.

3. **Rent**

   a. **Base Rent**. Tenant shall pay to Landlord annual rent of $19.93 per square foot of rentable lease space as shown on Exhibit A. The rent shall be payable in equal monthly installments (the "Rent") in advance on the 1st day of each month of the term. The Rent shall be payable at the above office of Landlord without abatement, deduction or setoff. For example, if Tenant rents 4,100 square feet, rent would be $7,475.03 per month.

   b. **Additional Rent**. Tenant shall also pay to Landlord as "Additional Rent," on demand, an amount equal to its "Pro-Rata Share" (which for purposes of this Lease shall be a fraction, the numerator of which is the square footage of the Leased Premises

and the denominator of which is the total square footage of the Premises) of all expenses actually incurred by Landlord for (a) CAM (as defined below) expenses incurred by Landlord; (b) commonly used dumpsters; and, (c) garbage service. Tenant shall pay a monthly amount equal to Landlord's reasonable estimate of these annual costs, and which Tenant shall pay in advance, on the first day of each month during the Term.
Not less often than once every 12 months, Landlord shall provide to Tenant a statement of costs, and with the statement a reconciliation of the monthly estimate of Tenant's Pro-Rata Share as appropriate, with any excess or deficiency being applied or added to Tenant's next installment of Additional Rent. All other sums that Tenant is required to pay under the terms of this Lease shall also be paid as Additional Rent. Tenant shall be entitled on reasonable advance written notice to Landlord, and at Tenant's cost, to inspect Landlord's books and records as they may relate to the statements submitted by Landlord to Tenant for Additional Rent.

c. **Property Taxes**. Tenant shall also pay before delinquent, all real estate taxes for the Leased Premises and personal property taxes for personal property used therein.

4. **Common Areas**. So long as Tenant is not in default under this Lease, Tenant, its agents, employees, customers, and invitees, shall have the use, in common with all others to whom the Landlord has granted or may later grant rights to use them, of the sidewalks, parking areas, and drives designated by Landlord, as these shall exist from time to time, for the Premises ("Common Areas"). During the Term Landlord, Landlord's agents or permitted third parties shall perform all necessary maintenance ("CAM") to the Common Areas (including, without limitation, general cleaning, snow removal, grass cutting, parking lot cleanup, repairs of exterior light fixtures, and light bulb replacement).

5. **Utilities**. The Leased Premises may be separately metered for gas, electricity, water and sewer. Tenant shall pay all charges for gas, electricity, water, power, telephone cable television and internet service used, rendered or supplied upon or in connection with the Leased Premises, and shall indemnify the Landlord against any liability or damages on such account. Tenant will have no responsibility to pay for utilities outside of the Leased Premises, provided all of Tenants exterior signage shall be wired through meter serving the Leased Premises. In the event Tenant uses utilities that are not separately metered, Landlord shall reasonably apportion Tenant's share of the usage, and bill Tenant for such amount as Additional Rent.

6. **Right of Landlord to Lease**. The Landlord covenants and warrants that it is in lawful possession and control of said Leased Premises, and has the authority to enter into this lease agreement.

7. **Quiet Enjoyment**. Landlord covenants that Tenant, on payment of all the aforesaid installments and performing all the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said Leased Premises for the term hereof. Landlord agrees that there are no restrictions applicable to the Leased Premises which affect and limit the right of Tenant to exercise any of the rights granted to Tenant by this Lease. Notwithstanding anything in this paragraph to the contrary, Landlord reserves the right to hold and conduct meetings,

sporting events, practices, graduation ceremonies, job fairs, circuses, concerts, and other activities determined appropriate in the sole discretion of Landlord, within the Arena, and that such activities do not violate this paragraph. During any ticketed activity in the Arena, Landlord may (i) require Tenant to pay a fee of up to 10% of its gross food sales during the activity, or (ii) require all of Tenant's patrons to buy a ticket to the activity. Further, Landlord may require Tenant to be closed during silent or formal activities, such as graduation ceremonies, weddings, meetings, etc., not to exceed 20 days per year.

8. **Use of Premises**. Tenant is granted the right during the term of this lease, or any renewals hereof, to occupy and use the Leased Premises for operating a bar and restaurant. Landlord and Tenant have entered into a Management Agreement for Tenant to operate Landlord's alcohol sales within the Leased Premises portion of the Arena ("Management Agreement"). In the event Tenant obtains its own liquor license, or is added as a co-licensee to the Liquor License, the parties shall terminate the Management Agreement. The parties will reasonably cooperate to add Tenant as a co-licensee to the Liquor License upon Landlord being satisfied with Tenant's operations and performance, in its sole discretion. Tenant shall comply with all existing vendor and brand exclusivity agreements entered into by Landlord that are binding on the Arena. Landlord shall not enter into any new agreements that are binding on the Arena without first discussing the terms of such agreements with Tenant.

9. **Tenant's Acceptance of Leased Premises As Is**. Tenant has accepted the Leased Premises\ in its "AS IS, WHERE IS" condition. Tenant acknowledges that Landlord shall not be required to make any renovations or improvements to the Leased Premises. Tenant waives any warranties, express or implied, of fitness, liability, and usefulness for Tenant's particular purpose or otherwise, with regard to the Leased Premises.

10. **Maintenance**. Tenant shall, at its own expense, make all necessary repairs and replacements within the Leased Premises, including pipes, heating system, plumbing system, window glass, fixtures and all other appliances belonging thereto, all equipment used in connection with the Leased Premises, and the sidewalks, curbs and vaults adjoining or appurtenant to the Leased Premises. Such repairs and replacements ordinary as well as extraordinary and structural and non-structural, shall be made promptly, when necessary. All repairs and replacements shall be in quality and class at least equal to the original work. On default of Tenant in making necessary repairs or replacements, Landlord may, but shall not be required to make such repairs and replacements for Tenant's account, and the expenses thereof shall constitute and be collectible as Additional Rent. Landlord shall be solely responsible for all necessary repairs and maintenance of the Premises except for the Leased Premises.

11. **Alterations or Improvements**. Tenant shall not make any alterations, additions, or improvements to the Premises except with the written consent of Landlord. Any alteration, addition or improvement made by the Tenant after such consent shall have been given, and any fixtures installed as part thereof, shall at the Landlord's option become the property of the Landlord upon the expiration or other sooner termination of this lease, provided, however, that Landlord shall have the right to require Tenant to remove such fixtures, additions or improvements at the Tenant's cost upon such termination of this lease provided that in the event

of any such removal, Tenant shall make all repairs necessitated by such removal so as to leave the premises in like condition as when taken except for ordinary wear and tear.

12. **Public Orders and Zoning**. Tenant shall, at its own expense, make all alterations, improvements, or repairs in the Leased Premises that may be ordered by public authorities, or required by changes in or additions to state and local zoning ordinances.

13. **Mechanical Failures**. Landlord shall not be liable for any damage to persons or property on account of the stoppage or failure of operation of any part of the mechanical plant of the building, or heating, air conditioning, plumbing or electrical facilities, whether for necessary or desirable repairs or improvements thereof, or occasioned by accident or other cause. All personal property in the Leased Premises shall be at the risk of Tenant only, and Landlord shall not be liable for any loss of or damage to said personal property, to said premises or to Tenant arising from the bursting, stoppage or leaking of water, gas, sewer or steampipes, the stoppage or failure of operation of any part of the mechanical plant of the building, or heating, air conditioning, plumbing or electrical facilities, or from any acts or neglect of co-tenants or other occupants of the building, or any other persons.

14. **Security**. Landlord shall not be liable for any injury to the person or property of the Tenant or any other persons caused by the criminal acts of third persons occurring at the Leased Premises.

15. **Insurance**. Tenant shall indemnify Landlord and save Landlord harmless from any liability or claim for damages that may be asserted against Landlord (including attorney fees) by reason of any accident or casualty occurring on or about the Premises. Tenant shall, at its own cost and expense, obtain and keep in force a policy or policies of public liability insurance with an insurance company approved by Landlord, with liability coverage of an amount as recommended by Landlord's insurance agent that, for the initial coverage, shall be not less than $1,000,000 for injury or death to any one person, $3,000,000 for injury or death to more than one person, and $1,000,000 regarding damage to property, and not less than $1,000,000 in liquor liability (dram shop) coverage. Tenant shall furnish Landlord with certificates or other evidence acceptable to Landlord indicating that the insurance is in effect and providing that Landlord shall be notified in writing at least 30 days before cancellation of any material change in or renewal of the policy. All insurance policies shall name Landlord and any persons designated by Landlord as additional insured parties. Any insurance policy maintained by Tenant shall include a clause or endorsement under which Tenant waives its rights of subrogation against Landlord.

16. **Compliance with Laws**. Tenant, under penalty of forfeiture and damages, agrees to promptly comply with all requirements of law and with all ordinances, regulations or orders of any state, municipal or other public authority affecting all or any part of the Leased Premises and with all requirements of the Board of Fire Underwriters or similar body and of any liability insurance company insuring the Landlord against liability for accidents in or connected with all or any part of the Leased Premises, and Tenant further agrees to save Landlord harmless from any and all penalties, fines or liabilities that may result from Tenant's failure to so comply.

17. **Destruction of Building**. In the event the Premises or Leased Premises shall be partially or totally destroyed by fire or other casualty insured under the insurance carried by Landlord, as to become partially or totally untenantable, the damage to the Premises and Leased Premises shall be promptly repaired by Landlord, unless Landlord shall elect not to rebuild as provided below. All other reconstruction within the Leased Premises shall be the sole responsibility of Tenant. In no event shall Landlord be required to repair or replace Tenant's trade fixtures, furnishings or equipment. If any such fire or other casualty shall occur within eighteen (18) months of the end the term of this Lease or any renewal term, Landlord or Tenant may, at its option, terminate this Lease with written notice to the other party within thirty days of the destruction.

18. **Risk of Loss**. During the term of this lease, and any extension or renewal thereof, the risk of loss with respect to all risks insurable under a fire and extended coverage insurance policy meeting the requirements of the laws of the State of Michigan, together with the risk of loss with respect to all uninsurable losses to the premises which are subject to the control or prevention by Tenant, shall rest upon Tenant. (The parties agree that for purposes of interpreting the foregoing provision, an example of an uninsurable loss which shall be the responsibility of Tenant would be Tenant's failure, as possessor of the premises, to detect a malfunction in the heating system during the winter, resulting in the freezing and bursting of water pipes in the premises. If the freezing and bursting of the water pipes and consequent damage flowing therefrom is not covered by the insurance required to be maintained by Tenant, all such damages resulting therefrom are the responsibility of and must be paid for by Tenant.)

19. **Subrogation**. Tenant, its officers, agents or employees shall not be liable for damage to the Leased Premises or for interruption of rent resulting from any of the perils covered by fire and extended coverage insurance, or which would be covered if such insurance were in force, and Landlord agrees not to sue for such damage and that every applicable policy of insurance will contain or be endorsed with the standard waiver of subrogation clause. Landlord shall not be liable for damage to the property or business of Tenant in or on the Leased Premises resulting from any of the perils covered if such insurance were in force, and Tenant agrees not to sue for such damage and that every applicable policy of insurance will contain or be endorsed with the standard waiver of subrogation clause.

20. **Liens and Encumbrances**. Tenant covenants that Tenant will not create or permit to be created or to remain, and will promptly discharge, at Tenant's sole cost and expense, any lien, encumbrance or charge upon the Leased Premises or any part thereof, or upon Tenant's leasehold interest therein, which lien, encumbrance or charge arises out of the use or occupancy of the Leased Premises by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant or by reason of any construction, alteration, addition, repair or demolition of any part of the Leased Premises. The existence of any construction, mechanic's, laborer's, materialman's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this paragraph, if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen or where there is a good faith dispute relating thereto, provided that in such event Tenant shall promptly prosecute an action to resolve the validity of the lien. Nothing in this lease contained shall be construed as constituting the consent or request of Landlord, expressed or implied, to any contractor, subcontractor,

laborer, materialman or vendor to or for the performance of any labor or construction, alteration, addition, repair or demolition of or to the Leased Premises or any part thereof. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Leased Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor or materials shall attach to the interest of Landlord in and to the Leased Premises.

21. **Assignment or Subletting**. Tenant shall not sublease, assign, mortgage, or encumber this lease without the prior written consent of the Landlord in each instance, which consent shall not be unreasonably withheld. If this lease is assigned, or if the Leased Premises or any part thereof is sublet, or occupied by anybody other than the Tenant, the Landlord may, after default by the Tenant, collect rent from the assignee, subtenant, or occupant and apply the net amount collected to the rent herein reserved. No such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee as tenant, or a release of the Tenant from the further performance by the Tenant of the covenants in this lease. The consent by the Landlord to an assignment shall not be construed to relieve the Tenant from obtaining the consent in writing of the Landlord to any further assignment.

22. **Eminent Domain**. If the Leased Premises are taken by a public authority under power of eminent domain, Tenant shall be entitled to a pro rata refund of any rent paid in advance. Landlord and Tenant, in any condemnation proceedings, shall each be entitled to recover their own damages, provided that Tenant agrees to cooperate with Landlord in Landlord's attempt to recover damages in any such condemnation proceedings and to furnish any and all information that Landlord may request in such attempt and provided further that Landlord agrees to cooperate with Tenant in Tenant's attempt to recover damages in any such condemnation proceedings and to furnish any and all information that Tenant may request in such attempt.

23. **Default and Repossession**. If the Leased Premises shall be deserted or vacated, or if proceedings are commenced against the Tenant in any court under a bankruptcy act or for the appointment of a trustee or receiver of the Tenant's property either before or after the commencement of the lease term, or if there shall be a default in the payment of rent or any part thereof for more than five days after written notice of such default by the Landlord, or if there shall be default in the performance of any other covenant, agreement, condition, rule or regulation herein contained or hereafter established on the part of the Tenant for more than twenty days after written notice of such default by the Landlord, this lease (if the Landlord so elects) shall thereupon become null and void, and the Landlord shall have the right to reenter or repossess the Leased Premises, either by force, summary proceedings, surrender, or otherwise, and dispossess and remove therefrom the Tenant, or other occupants thereof, and their effects, without being liable to any prosecution therefor. In such case, the Landlord may, at its option, relet the Leased Premises or any part thereof, as the agent of the Tenant, and the Tenant shall pay the Landlord the difference between the rent hereby reserved and agreed to be paid by the Tenant for the portion of the term remaining at the time of reentry or repossession and the amount, if any, received or to be received under such reletting for such portion of the term. The Tenant hereby expressly waives the service of notice of intention to reenter or of instituting legal

proceedings to that end. Tenant agrees to pay all expenses and damages incurred by Landlord as a result of Tenant's default, including Landlord's attorney fees.

24. **Curing of Tenant's Default**. If Tenant shall fail to perform any of its obligations hereunder, Landlord may, if it so elects, and after five (5) days prior notice to Tenant, cure such default at Tenant's expense, and Tenant agrees to reimburse Landlord (as Additional Rent) for all costs and expenses incurred as a result thereof upon demand.

25. **Right to Show the Premises**. Tenant agrees that ninety (90) days prior to the expiration of the term of this lease, or any extension hereof, Landlord may display in and about the Leased Premises “For Rent” or “For Sale” signs and may have reasonable access to the Leased Premises for the purpose of exhibiting same to prospective tenants.

26. **Surrender**. Tenant shall quit and surrender the premises at the expiration of the lease term, in as good a state and condition as the premises were at the commencement of the term, reasonable use and wear thereof excepted.

27. **Holding Over**. It is agreed that any holding over by the Tenant upon expiration of the term of this lease or any extension hereof, shall operate as an extension of this lease from month to month only.

28. **Notices**. Any notice required to be given in writing under the provisions of this lease shall be deemed to be delivered if given personally to the party entitled to such notice or if deposited in the U.S. mail and addressed with the business address of the party entitled to such notice with postage thereon fully prepaid.

29. **Waiver**. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition.

30. **Laws of Michigan to Govern**. This lease agreement shall be interpreted under the laws of the State of Michigan.

31. **Binding upon Successors and Assigns**. This lease shall be binding upon the parties hereto and their respective heirs, administrators, personal representatives, successors and assigns, provided, however, that Tenant shall not be permitted to assign this Lease without the express written consent of Landlord.

32. **Liquor License**. In the event the Michigan Liquor Control Commission (“MLCC”) requires the owner of the Liquor License to take any action, or refrain from any action, Tenant shall immediately take steps to satisfy the MLCC, and keep the Liquor License in compliance. Tenant shall indemnify Landlord for any fine or violation issued by the MLCC. In the event the MLCC disapproves of Tenant’s use of the Liquor License in any way, Tenant shall immediately cease such use, or Landlord may terminate this Lease.

33. **Restated**. This Lease restates and supersedes any prior lease agreement or development agreement entered into between the parties for the Leased Premises, and any such agreements are deemed null and void.

LANDLORD –
City of Muskegon,
a Michigan municipal corporation

By: ______________________________
Name:
Title:
Date: ____________, 2018

TENANT–
Rad Dad's, LLC,
a Michigan limited liability company

By: ______________________________
Name:
Title:
Date: ____________, 2018

EXHIBIT A

Leased Premises

EXHIBIT B

Premises

The part of Lot 1, Block 567 of the Revised Plat of 1903 of the City of Muskegon, Muskegon County, Michigan, described as follows: Commencing at the Southwesterly corner of said Block 567; thence North 50°55'50" East along the Northwesterly line of Western Avenue 175.29 feet for POINT OF BEGINNING; thence North 39°01'35" West 172.00 feet to the Northwesterly line of Thayer Avenue; thence South 50°55'50" West along said Northwesterly line 116.00 feet to the Northeasterly line of Fifth Street; thence North 39°01'35" West along said Northeasterly line 188.65 feet to the Southeasterly right of way line of Shoreline Drive; thence Northeasterly along said Southeasterly line on the arc of a 5187.69 foot curve to the right a distance of 159.20 feet (the central angle of said curve is 1°45'30" and the long chord bears North 39°09'22" East 159.20 feet); thence continuing Northeasterly along said Southeasterly line on the arc of a 1107.00 foot radius curve to the left a distance of 198.97 feet (the central angle of said curve is 10°17'54" and the long chord bears North 34°53'10" East 198.70 feet) to the Southwesterly line of Fourth Street; thence Southeasterly along said Southwesterly line on the arc of a 619.21 foot curve to the right a distance of 5.65 feet (the central angle of said curve is 00°31'20" and the long chord bears South 58°52'07" East 5.65 feet); thence South 59°07'47" East along said Southwesterly line 128.42 feet; thence continuing Southeasterly along Southwesterly line of the arc of a 138.77 foot radius curve to the right a distance of 119.33 feet (the central angle of said curve is 49°16'12" and the long chord bears South 34°29'41" East 115.69 feet); thence South 09°51'35" East along said Southwesterly line 4.10 feet; thence Southeasterly along said Southwesterly line on the arc of a 186.93 foot curve to the left a distance of 49.53 feet (the central angle of said curve is 15°10'50" and the long chord bears South 17°27'00" East 49.38 feet); thence South 25°02'25" East along said Southwesterly line 48.60 feet; thence Southeasterly along said Southwesterly line on the arc of a 423.00 foot curve to the left a distance of 103.39 feet (the central angle of said curve is 14°00'15" and the long chord bears South 32°02'32" East 103.13 feet); thence South 39°02'40" East along said Southwesterly line 7.81 feet to the Northwesterly line of Western Avenue; thence South 50°55'50" West along said Northwesterly line 223.25 feet to Point of Beginning.

Date: July 20, 2018

To: Honorable Mayor and City Commissioners

From: Engineering

RE: City – MDOT Agreement;
Black Creek Road; Sherman Blvd. to Latimer Dr.

SUMMARY OF REQUEST:

Approve the attached contract with MDOT for the Black Creek Road construction between Sherman Boulevard and Latimer Drive and approve the attached resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT:

MDOT's participation is limited to the approved federal funds of $340,000. The estimated total construction cost is $568,100 plus engineering cost.

BUDGET ACTION REQUIRED:

None at this time, this project is included in the 18-19 budget.

STAFF RECOMMENDATION:

Approve the attached contract and resolution authorizing the mayor & clerk to sign both.

COMMITTEE RECOMMENDATION:

RESOLUTION

RESOLUTION FOR APPROVAL OF A CONTRACT AGREEMENT BETWEEN THE MICHIGAN DEPARTMENT OF TRANSPORTATION AND THE CITY OF MUSKEGON FOR THE HOT MIXED ASPHALT PAVEMENT WORK ALONG BLACK CREEK ROAD, FROM SHERMAN BLVD NORTH TO LATIMER DR TOGETHER WITH OTHER NECESSARY RELATED WORK ITEMS AND AUTHORIZATION FOR MAYOR STEPHEN J. GAWRON AND CITY CLERK, ANN MEISCH, TO EXECUTE SAID CONTRACT

Moved by COMMISSIONER JOHNSON and supported by VICE MAYOR HOOD that the following Resolution be adopted:

WHEREAS, entry by the City of Muskegon into Contract no. **18-5340** between the Michigan Department of Transportation and the City of Muskegon for the **Hot Mixed Asphalt Pavement work along Black Creek Road from Sherman Boulevard north to Latimer Drive** within the City is in the best interests of the City of Muskegon.

RESOLVED, that entry by the City into Contract Agreement Number **18-5340** be and the same is hereby authorized and approved and the Mayor and Clerk are authorized to execute said contract for and on behalf of the City of Muskegon.

Adopted this 26[TH] day of APRIL, 2016.

BY ______________________________

Stephen J. Gawron, Mayor

ATTEST ______________________________

Ann Meisch, City Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on APRIL 26**, 2016**. 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

July 13, 2018

Ms. Ann Meisch, City Clerk
City of Muskegon
933 Terrace Street
Muskegon, Michigan 49440

Dear Ms. Meisch:

RE: Contract Number: 18-5340
Control Section: STUL 61000; CM 61000
Job Number: 130800A; 202169A
Location: Sherman Blvd to Latimer; Oltoff at Black Creek Road

Enclosed are the original and one copy of the above described contract between your organization and the Michigan Department of Transportation (MDOT). Please take time to read and understand this contract.

1. Do not date the contracts. MDOT will date the contracts when they are executed.

2. If this contract meets with your approval, secure the authorized signatures on the enclosed contracts.

3. Attach two (2) original certified resolutions. The resolution should specifically name the officials who are authorized to sign the contract and include the contract number. If you need an example of a resolution, please contact Kathy Fulton at fultonk@michigan.gov or (517) 373-4161.

4. Return the signed original and copy of the above-described contract and attach two (2) original certified resolutions, if applicable to:

   Attention: Kathy J. Fulton
   MDOT – Development Services Division, 2nd Floor
   425 West Ottawa Street, P.O. Box 30050
   Lansing, MI 48909

To ensure that the work and payment for this project is not delayed, return the contracts within 35 days from the date of this letter. A copy of the executed contract will be returned to your organization.

If you have questions on the content of this contract, or revisions are required, please contact Monica Uribe, Local Goverument Contract Engineer at uribem1@michigan.gov or (517) 335-2266.

Enclosure

STP & CMAQ

	DA
Control Section	STUL 61000; CM 61000
Job Number	130800A; 202169A
Project	1800(854)(853)
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	18-5340

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made and entered into this date of ________________________, by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF MUSKEGON, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in the City of Muskegon, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated June 14, 2018, attached hereto and made a part hereof:

PART A - STUL 61000; JOB #130800A; 1800(854); FEDERAL PARTICIPATION
Hot mix asphalt cold milling and resurfacing work along Black Creek Road from Sherman Boulevard to Latimer Drive; including pavement removal, storm sewer, concrete curb and gutter, and pavement marking work; and all together with necessary related work.

PART B - CM 61000; JOB #202169A; 1800(853); FEDERAL PARTICIPATION
Turn lane installation, permanent signing, and pavement marking work at the Olthoff Drive and Black Creek Road intersection; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

SURFACE TRANSPORTATION PROGRAM
CONGESTION MITIGATION AND AIR QUALITY ACT

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except for construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in accordance with the following:

<u>PART A</u>
Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) $260,000 or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

<u>PART B</u>
Federal Congestion Mitigation and Air Quality Act Funds shall be applied to the eligible items of the PART B portion of the PROJECT COST up to the lesser of: (1) $80,000 or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART B portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART B portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses.

7. Upon completion of construction of the PROJECT, the REQUESTING PARTY will promptly cause to be enacted and enforced such ordinances or regulations as may be necessary to prohibit parking in the roadway right-of-way throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhere to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that a) it is a person under the Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., as amended, (NREPA) and is not aware of and has no reason to believe that the property is a facility as defined in the NREPA; b) the REQUESTING PARTY further certifies that it has completed the tasks required by MCL 324.20126 (3)(h); c) it conducted a visual inspection of property within the existing right of way on which construction is to be performed to determine if any hazardous substances were present; and at sites on which historically were located businesses that involved hazardous substances, it performed a reasonable investigation to determine whether hazardous substances exist. This reasonable investigation should include, at a minimum, contact with local, state and federal environmental agencies to determine if the site has been identified as, or potentially as, a site containing hazardous substances; d) it did not cause or contribute to the release or threat of release of any hazardous substance found within the PROJECT limits.

The REQUESTING PARTY also certifies that, in addition to reporting the presence of any hazardous substances to the Department of Environmental Quality, it has advised the DEPARTMENT of the presence of any and all hazardous substances which the REQUESTING PARTY found within the PROJECT limits, as a result of performing the investigation and visual inspection required herein. The REQUESTING PARTY also certifies that it has been unable to identify any entity who may be liable for the cost of remediation. As a result, the REQUESTING PARTY has included all estimated costs of remediation of such hazardous substances in its estimated cost of construction of the PROJECT.

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The

REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.

B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.

C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

CITY OF MUSKEGON	MICHIGAN DEPARTMENT OF TRANSPORTATION
By____________________ Title:	By____________________ Department Director MDOT
By____________________ Title:	

FORM APPROVED
MD 7/11/18
ASSISTANT ATTORNEY GENERAL

RDB
7/2/18

APPROVED BY:
7/12/2018
Administrator Real Estate
Date

June 14, 2018

EXHIBIT I

CONTROL SECTION	STUL 61000; CM 61000
JOB NUMBER	130800A; 202169A
PROJECT	1800(854)(853)

ESTIMATED COST

CONTRACTED WORK

	PART A	PART B	TOTAL
Estimated Cost	$431,400	$136,700	$568,100

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	$431,400	$136,700	$568,100
Less Federal Funds*	$260,000	$ 80,000	$340,000
BALANCE (REQUESTING PARTY'S SHARE)	$171,400	$ 56,700	$228,100

*Federal Funds for the PART A and PART B portions of the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.

B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.

1. Engineering

    a. FAPG (6012.1): Preliminary Engineering

    b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts

    c. FAPG (23 CFR 635A): Contract Procedures

    d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

2. Construction

    a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims

    b. FAPG (23 CFR 140B): Construction Engineering Costs

    c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies

    d. FAPG (23 CFR 635A): Contract Procedures

    e. FAPG (23 CFR 635B): Force Account Construction

    f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)

h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways

i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments–Allowable Costs

3. Modification Or Construction Of Railroad Facilities

a. FAPG (23 CFR 140I): Reimbursement for Railroad Work

b. FAPG (23 CFR 646B): Railroad Highway Projects

C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of $100,000.00 stipulate the following with respect to their specific jurisdictions:

1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.

2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.

3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.

D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.

E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.

B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.

C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.

D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.

E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than $100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.

H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.

I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.

K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.

L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.

M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.

N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.

O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.

P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.

Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

   The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

   The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

   If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

   In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

   Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

a. Agencies expending a total of $500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than $500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.

3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than $1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _______", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.

5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.

6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than $1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.

2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.

3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).

5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

   Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

   a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

   b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

      With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

   c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

   d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.

C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.

D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.

B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.

C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.

D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.

E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.

2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.

3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.

5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.

8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.

9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

APPENDIX B
TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations**: For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.

2. **Nondiscrimination**: The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.

3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment**: All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:

    a. Withholding payments to the contractor until the contractor complies; and/or

    b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

A. **Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:**

> **The recipient shall not discriminate on the basis of racc, color, national origin, or sex in the award and performance of any US DOT-assistcd contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable stcps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agrecment. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the rccipicnt of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).**

B. **Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:**

> **The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may rcsult in the termination of this contract or such other remedy as the rccipicnt dcems appropriate.**

Date: 8/14/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: City Hall Duct Cleaning

SUMMARY OF REQUEST:

Award a contract for duct cleaning at City Hall to Modernistic, the lowest responsible bidder. Three contractors were contacted, and two supplied bids as follows.

Modernistic	$9,899
Stanley Steamer	$13,832

FINANCIAL IMPACT:

$9,899

BUDGET ACTION REQUIRED:

None. A City Hall upgrade project is included in the capital project list of the 2018/2019 budget.

STAFF RECOMMENDATION:

Award the project to the low bidder, Modernistic.

Jeff Tompkins
Business Development Representative
Modernistic
Office: 1-800-627-5080 • Fax: 269-685-9796
Cell: 616-862-5515
E-Mail: jtompkins@modernistic.net
Website: www.modernistic.net

The HVAC Inspection, Maintenance and Restoration Association

SCOPE & ESTIMATE

City of Muskegon (City Hall Building)
933 Terrace St.
Muskegon, MI 49441

May 7th, 2018

The following Scope and Estimate is recommended to properly clean and decontaminate the HVAC ductwork and units in the building.

(3) Three Commercial Furnace Units

1. Clean all accessible interior/exterior of housing surfaces.
2. Clean all fans and related components.

Ductwork

1. Source removal process will be used to clean supply ductwork.
2. Debris, dust and particulates will be removed by physical contact with a soft vacuum brush attached to our HEPA Vacuum System in conjunction with a Negative Air Machine and air washing devices.
3. Access holes will be cut as needed to provide entry points for source removal, and visual inspection sights.
4. Before and After Pictures can be provided upon request

Supply & Return Registers

1. All accessible supply and return register will be hand cleaned and sanitized. If either is affixed to structure or non-accessible then it will be cleaned in place.
2. Area around supply register/return air grill will be HEPA vacuumed.

Sheet Metal Access Panels

1. Access panels will be cut as required using cold cutting method-hand operated power tools.
2. Sheet metal patches will be the same gauge or heavier than ductwork.
3. Metal duct tape will be used with sheet metal screws to anchor patches.
4. Insulation removed during creating access openings will be replaced.
5. Existing access holes will be used when possible.

Equipment

1. Truck Mounted Vacuum
2. Air Washing Equipment
3. HEPA Shop Vacuum
4. Cutting and Patching Kit for Sheet Metal

Safety

1. Modernistic and its employees will be familiar with and adhere to all appropriate OSHA and NIOSH safety procedures. This includes working conditions, power equipment, and safety equipment.

Special Points

1. Building will be responsible for providing adequate power, lighting, and water for the duration of the project.
2. Modernistic cannot be held responsible for recontamination of supply air ducts and/or mechanical units due to filter maintenance, improper air mixture and/or contaminated dead air space.
3. Modernistic will replace filters, if provided by customer at time of cleaning.
4. Modernistic recognizes NADCA Standard ACR 2006 which addresses the mechanical cleaning of air conveyance system.

Pricing

In pricing, consideration was given to the scope of work, volume of work, and the time frame for completing the job. Modernistic's price for the above scope of work is as follows:

HVAC Cleaning:

***Clean all 3 HVAC Units**
***Clean all Supply and Return Vents**
***Clean all Duct Work**

TOTAL: **$9899**

- Note:
  - This scope of work and pricing will be effective for a period of 90 days. After that time, review of the scope and pricing may be required.
  - Net 10 days from completion of job

Respectfully Submitted,

Jeff Tompkins

Approved By:____ Date:_______

April 26, 2018

City Of Muskegon
933 Terrance St
Muskegon, MI 49440

Re: City Hall - Duct Cleaning

Stanley Steemer would like to thank you for the opportunity to present our services to the City of Muskegon. We have taken pride in our delivery of quality cleaning for over seventy years in the cleaning industry. Stanley Steemer is certified by NADCA "National Air Duct Cleaners Association" and also is a State of Michigan Licensed Mechanical Contractor. We comply with all NADCA commercial HVAC system cleaning specifications and requirements and clean to their standards.

Scope of Work

The work involves the removal and disposal of particulates from the HVAC ductwork system utilizing a combination of power driven rotary brushes, aggressive agitation tools, compressed air, and negative pressure. We will mechanically clean all non lined main trunk lines and branch duct runs. All lined duct work and flexible duct will be cleaned with compressed air, non aggressive agitation devices, and contact vacuuming. The cleaning does include the wiping down of attached registers and diffusers.

We can provide you with photo documentation of "Before" and "After" cleaning results.

Safety

Stanley Steemer maintains the highest safety standards. We abide by all MIOSHA safety standards especially lock out/tag out, confined space, and fall prevention. Our crews are also thoroughly trained and we adhere to a strict drug free work place policy

Price:

City Hall:
- Clean approximately 3,321 linear feet of supply ductwork
- Clean approximately 1,220 linear feet of return ductwork
- (75) Boiler Coils
- (2) AHU and (2) Return Fans
- Stanley Steemer will install permanent access panels to facilitate cleaning

Total Project Price Not To Exceed: $ 13,832.00

*** instead of permeant access panels we could install patches reducing the cleaning cost to $10,082.00**

If you have any questions, or if I can be of any further assistance, please give me a call at (616) 878-7575 or 1-800-783-3637.

Sincerely,

Christopher Dougherty ASCS, CVI
Operations Manager
Stanley Steemer Great Lakes, Inc.
MI Mechanical License # 7116655

Date: July 26th, 2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Steven Street Storm Sewer Outlet Repairs

SUMMARY OF REQUEST:

The DPW is requesting permission to rent equipment and purchase materials necessary to complete repairs to the Stevens Street Storm Sewer Outlet. The storm sewer outlet has partially collapsed and is causing substantial erosion. An MDEQ permit has been obtained for the work and bids were taken where feasible for the rental of equipment and purchase of materials necessary for the repairs. Labor to be completed by Highway Department staff.

FINANCIAL IMPACT:

Materials - $12,208.20 ($4,208.20 Pipe + $8,000.00 Drainage Structure
Equipment - $2,935.00 (Excavator Rental)

Total - $15,143.20 from Local Street Fund

BUDGET ACTION REQUIRED:

None at this time. Equipment and material purchases will be funded from the Local Street Fund.

STAFF RECOMMENDATION:

Authorize staff to rent equipment and materials to make repairs to the Stevens Street Storm Water Outlet.

Quotation

ejco.com
800 626 4653

Account Name	City of Muskegon
Ship to	1350 East Keating Ave, Muskegon, MI, US, 49442
Bill to	Attention Accounts Payable 1350 East Keating Ave, Muskegon, MI, US, 49442
Full Name	
Business Phone	
Email	
Business Fax	
Close Date	7/26/2018

Quote Number	00229257
Quote Name	HP Pipe Quote
Created Date	7/26/2018
Expiration Date	
Prepared by	Mike Vander Molen
Email	mike.vandermolen@ejco.com
Phone	616-538-2040
Fax	616-538-4990

Quantity	Product N°	Line Item Description	Notes		Sales Price (USD)	Total Price (USD)
40	90300000	ADS 48" HP DUAL WALL 20'			60.03	2401.20
20	90300000	ADS 60" HP DUAL WALL 20'			90.35	1807.00

Subtotal	4208.20 USD
Grand Total	4208.20 USD

Notes and Comments

RENTAL QUOTATION

Contractors Rental Corp.
600 AIS Drive
Grand Rapids, MI 49548

Phone:	***616-538-2400***
Fax:	***616-538-0617***
Mobile:	***616-250-9867***

To: **City of Muskegon**

From: **Alex VanKampen**

E-Mail:

Date: **7 / 24 / 18**

Phone:

I appreciate you giving me the opportunity to quote you the following rates for the equipment you have requested. The following rates are based on 10 hours run time per day, 50 hours per week, and 200 hours per month. Additional charges apply if exceeded. Your rates are as follows:

Job Site: Muskegon, MI

	Day	Week	Month	Trucking
Komatsu PC240LC Excavator	**$1,020**	**$2,935**	**$8,035**	**$400**

Please let me know if you have any further questions. The following rates do not include sales tax (6%). Customer is required to provide proof of insurance for rented and leased equipment coverage listing Contractors Rental Corp as additional insured and loss payee. If insurance coverage is not supplied, a non-refundable **14% damage waiver fee** will apply to the quoted and billed rate of each machine listed. Thank you for the opportunity to quote you on this project. I look forward to earning your business.

Sincerely,

Alex VanKampen
Rental Coordinator

Vern Berndt

From: Rick Kerber <Rick.Kerber@MICHIGANCAT.com>
Sent: Tuesday, July 24, 2018 10:33 AM
To: Vern Berndt
Cc: Rick Kerber
Subject: RE: Excavator Rental

Hi Vern,

Our Cat 329 Exc will lift the 16,000lbs.

Your rate on this machine is $1255.00 a day/$3355.00 a week/$9585.00 a month. Freight to Muskegon is quoted at $450.00 each way.

Thank you!

Best regards,

Rick Kerber
Rental Coordinator
Michigan Cat.
7700 Caterpillar Dr, Grand Rapids, Mi
☎: 616-827-8000 EXT. 2740 | : 616-262-1155 | :866-451-0961
Rick.kerber@michigancat.com
Michigan CAT

Leo Evans

From: Vern Berndt
Sent: Thursday, July 26, 2018 10:27 AM
To: Leo Evans
Subject: FW: Message from "DPW-RICOH6001"
Attachments: 20180726092406643.pdf

Leo,

Attached are cost for equipment and pipe for Stevens St, $8000.00 is the cost on the structure from Bush Concrete.

Vern Berndt
Highway Department Supervisor
City of Muskegon
231-724-6992

-----Original Message-----
From: Public_Works_Copier@ricoh.com <Public_Works_Copier@ricoh.com>
Sent: Thursday, July 26, 2018 9:24 AM
To: Vern Berndt <vern.berndt@shorelinecity.com>
Subject: Message from "DPW-RICOH6001"

This E-mail was sent from "DPW-RICOH6001" (Aficio MP 6001).

Scan Date: 07.26.2018 09:24:06 (-0400)
Queries to: Public_Works_Copier@ricoh.com

NOTICE OF AUTHORIZATION

Permit Number: WRP012567 v. 1
Site Name: 61-Stevens Street Stormwater Outlet

Date Issued: July 23, 2018
Expiration Date: July 23, 2023

The Michigan Department of Environmental Quality, Water Resources Division, P.O. Box 30458, Lansing, Michigan 48909-7958, under provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; specifically:

- ☒ Part 31, Floodplain Regulatory Authority of the Water Resources Protection.
- ☒ Part 301, Inland Lakes and Streams.
- ☒ Part 303, Wetlands Protection.
- ☐ Part 315, Dam Safety.
- ☐ Part 323, Shorelands Protection and Management.
- ☐ Part 325, Great Lakes Submerged Lands.
- ☐ Part 353, Sand Dunes Protection and Management.

Authorized activity:

Remove remnants of failed storm water outlet including approximately 43-feet of 3-foot diameter pipe, a single, approximately 5-foot diameter drainage structure, and approximately 90-feet of 3.5-foot diameter pipe. Install 34-feet of new 4-foot diameter pipe, a new 8-foot diameter drainage structure, and 17-feet of 5-foot diameter pipe along with end section and riprap stabilization. New storm water outfall will be approximately 80-feet shorter than the existing system and will allow for increased filtration through vegetation prior to entering Ryerson Creek. Fill approximately 150-cubic yards of material below the 100-year floodplain elevation to re-stabilize the slope near the outlet of the pipe (current failed outfall was perched). Impacting 0.03 acres of adjacent wetland.

To be conducted at property located in: Muskegon County, Waterbody: Ryerson Creek
Section 21, Town 10N, Range 16W, City of Muskegon

Permittee:
Leo Evans
City of Muskegon
1350 East Keating Avenue
Muskegon, MI 49442

Issued By:

Holly Vickers
Grand Rapids District Office
Water Resources Division
616-295-2787

This notice must be displayed at the site of work.
Laminating this notice or utilizing sheet protectors is recommended.
Please refer to the above permit number with any questions or concerns.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION PERMIT

Issued To:

City of Muskegon
1350 East Keating Avenue
Muskegon, MI 49442

Permit No:	WRP012567 v.1
Submission No.:	HNE-TQZB-QEPN9
Site Name:	61-Stevens Street Stormwater Outlet
Issued:	July 23, 2018
Revised:	
Expires:	July 23, 2023

This permit is being issued by the Michigan Department of Environmental Quality (MDEQ), Water Resources Division (WRD), under the provisions of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); specifically:

☒ Part 301, Inland Lakes and Streams
☒ Part 303, Wetlands Protection
☐ Part 315, Dam Safety
☒ Part 31, Water Resources Protection (Floodplain Regulatory Authority)
☐ Part 323, Shorelands Protection and Management
☐ Part 325, Great Lakes Submerged Lands
☐ Part 353, Sand Dunes Protection and Management

Permission is hereby granted, based on permittee assurance of adherence to State of Michigan requirements and permit conditions, to:

Authorized Activity:

Remove remnants of failed storm water outlet including approximately 43-feet of 3-foot diameter pipe, a single, approximately 5-foot diameter drainage structure, and approximately 90-feet of 3.5-foot diameter pipe. Install 34-feet of new 4-foot diameter pipe, a new 8-foot diameter drainage structure, and 17-feet of 5-foot diameter pipe along with end section and riprap stabilization. New storm water outfall will be approximately 80-feet shorter than the existing system and will allow for increased filtration through vegetation prior to entering Ryerson Creek. Fill approximately 150-cubic yards of material below the 100-year floodplain elevation to re-stabilize the slope near the outlet of the pipe (current failed outfall was perched). Impacting 0.03 acres of adjacent wetland.

Waterbody Affected:	Ryerson Creek
Property Location:	Muskegon County, City of Muskegon, Town/Range/Section 10N16W21

Authority granted by this permit is subject to the following limitations:

A. Initiation of any work on the permitted project confirms the permittee's acceptance and agreement to comply with all terms and conditions of this permit.
B. The permittee, in exercising the authority granted by this permit, shall not cause unlawful pollution as defined by Part 31 of the NREPA.
C. This permit shall be kept at the site of the work and available for inspection at all times during the duration of the project or until its date of expiration.
D. All work shall be completed in accordance with the approved plans and specifications submitted with the application and/or plans and specifications attached to this permit.
E. No attempt shall be made by the permittee to forbid the full and free use by the public of public waters at or adjacent to the structure or work approved.
F. It is made a requirement of this permit that the permittee give notice to public utilities in accordance with 2013 PA 174 (Act 174) and comply with each of the requirements of Act 174.

G. This permit does not convey property rights in either real estate or material, nor does it authorize any injury to private property or invasion of public or private rights, nor does it waive the necessity of seeking federal assent, all local permits, or complying with other state statutes.
H. This permit does not prejudice or limit the right of a riparian owner or other person to institute proceedings in any circuit court of this state when necessary to protect his rights.
I. Permittee shall notify the MDEQ within one week after the completion of the activity authorized by this permit by completing and forwarding the attached preaddressed postcard to the office addressed thereon.
J. This permit shall not be assigned or transferred without the written approval of the MDEQ.
K. Failure to comply with conditions of this permit may subject the permittee to revocation of permit and criminal and/or civil action as cited by the specific state act, federal act, and/or rule under which this permit is granted.
L. All dredged or excavated materials shall be disposed of in an upland site (outside of floodplains, unless exempt under Part 31 of the NREPA, and wetlands).
M. In issuing this permit, the MDEQ has relied on the information and data that the permittee has provided in connection with the submitted application for permit. If, subsequent to the issuance of a permit, such information and data prove to be false, incomplete, or inaccurate, the MDEQ may modify, revoke, or suspend the permit, in whole or in part, in accordance with the new information.
N. The permittee shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, employees, agents, and representatives for any and all claims or causes of action arising from acts or omissions of the permittee, or employees, agents, or representative of the permittee, undertaken in connection with this permit. The permittee's obligation to indemnify the State of Michigan applies only if the state: (1) provides the permittee or its designated representative written notice of the claim or cause of action within 30 days after it is received by the state, and (2) consents to the permittee's participation in the proceeding on the claim or cause of action. It does not apply to contested case proceedings under the Administrative Procedures Act, 1969 PA 306, as amended, challenging the permit. This permit shall not be construed as an indemnity by the State of Michigan for the benefit of the permittee or any other person.
O. Noncompliance with these terms and conditions and/or the initiation of other regulated activities not specifically authorized shall be cause for the modification, suspension, or revocation of this permit, in whole or in part. Further, the MDEQ may initiate criminal and/or civil proceedings as may be deemed necessary to correct project deficiencies, protect natural resource values, and secure compliance with statutes.
P. If any change or deviation from the permitted activity becomes necessary, the permittee shall request, in writing, a revision of the permitted activity from the MDEQ. Such revision request shall include complete documentation supporting the modification and revised plans detailing the proposed modification. Proposed modifications must be approved, in writing, by the MDEQ prior to being implemented.
Q. This permit may be transferred to another person upon written approval of the MDEQ. The permittee must submit a written request to the MDEQ to transfer the permit to the new owner. The new owner must also submit a written request to the MDEQ to accept transfer. The new owner must agree, in writing, to accept all conditions of the permit. A single letter signed by both parties that includes all of the above information may be provided to the MDEQ. The MDEQ will review the request and, if approved, will provide written notification to the new owner.
R. Prior to initiating permitted construction, the permittee is required to provide a copy of the permit to the contractor(s) for review. The property owner, contractor(s), and any agent involved in exercising the permit are held responsible to ensure that the project is constructed in accordance with all drawings and specifications. The contractor is required to provide a copy of the permit to all subcontractors doing work authorized by the permit.
S. Construction must be undertaken and completed during the dry period of the wetland. If the area does not dry out, construction shall be done on equipment mats to prevent compaction of the soil.
T. Authority granted by this permit does not waive permit requirements under Part 91, Soil Erosion and Sedimentation Control, of the NREPA, or the need to acquire applicable permits from the County Enforcing Agent (CEA).
U. Authority granted by this permit does not waive permit requirements under the authority of Part 305, Natural Rivers, of the NREPA. A Natural Rivers Zoning Permit may be required for construction, land alteration, streambank stabilization, or vegetation removal along or near a natural river.
V. The permittee is cautioned that grade changes resulting in increased runoff onto adjacent property is subject to civil damage litigation.
W. Unless specifically stated in this permit, construction pads, haul roads, temporary structures, or other structural appurtenances to be placed in a wetland or on bottomland of the water body are not authorized and shall not be constructed unless authorized by a separate permit or permit revision granted in accordance with the applicable law.
X. For projects with potential impacts to fish spawning or migration, no work shall occur within fish spawning or migration timelines (i.e., windows) unless otherwise approved in writing by the Michigan Department of Natural Resources (MDNR), Fisheries Division.
Y. Work to be done under authority of this permit is further subject to the following special instructions and specifications:

1. Authority granted by this permit does not waive permit or program requirements under Part 91 of the NREPA or the need to acquire applicable permits from the CEA. To locate the Soil Erosion Program Administrator for your

county, visit www.mi.gov/deqstormwater and select "Soil Erosion and Sedimentation Control Program" under "Related Links."

2. The authority to conduct the activity as authorized by this permit is granted solely under the provisions of the governing act as identified above. This permit does not convey, provide, or otherwise imply approval of any other governing act, ordinance, or regulation, nor does it waive the permittee's obligation to acquire any local, county, state, or federal approval or authorization necessary to conduct the activity. **This project may require a permit from the United States Army Corps of Engineers.**
3. No fill, excess soil, or other material shall be placed in any wetland, floodplain, or surface water area not specifically authorized by this permit, its plans, and specifications.
4. This permit does not authorize or sanction work that has been completed in violation of applicable federal, state, or local statutes.
5. The permit placard shall be kept posted at the work site, in a prominent location at all times for the duration of the project, or until permit expiration.
6. This permit is being issued for the maximum time allowed and no extensions of this permit will be granted. Initiation of the construction work authorized by this permit indicates the permittee's acceptance of this condition. The permit, when signed by the MDEQ, will be for a five-year period beginning on the date of issuance. If the project is not completed by the expiration date, a new permit must be sought.
7. **Prior to the start of construction, all adjacent non-work wetland areas shall be protected by properly trenched sedimentation barrier to prevent sediment from entering the wetland. Orange construction fencing shall be installed as needed to prohibit construction personnel and equipment from entering or performing work in these areas. Fence shall be maintained daily throughout the construction process. Upon project completion, the accumulated materials shall be removed and disposed of at an upland site, the sedimentation barrier shall then be removed in its entirety and the area restored to its original configuration and cover.**

Issued By:

Holly Vickers
Grand Rapids District Office
Water Resources Division
616-295-2787

cc: Muskegon County Drain Commissioner
Nancy Cuncannan, MDEQ, WRD
Brian Gunderman, MDNR, Fisheries
Mike Worm, MDEQ, WRD
Brandie Stefanski, MDEQ, WRD
USACE-Detroit

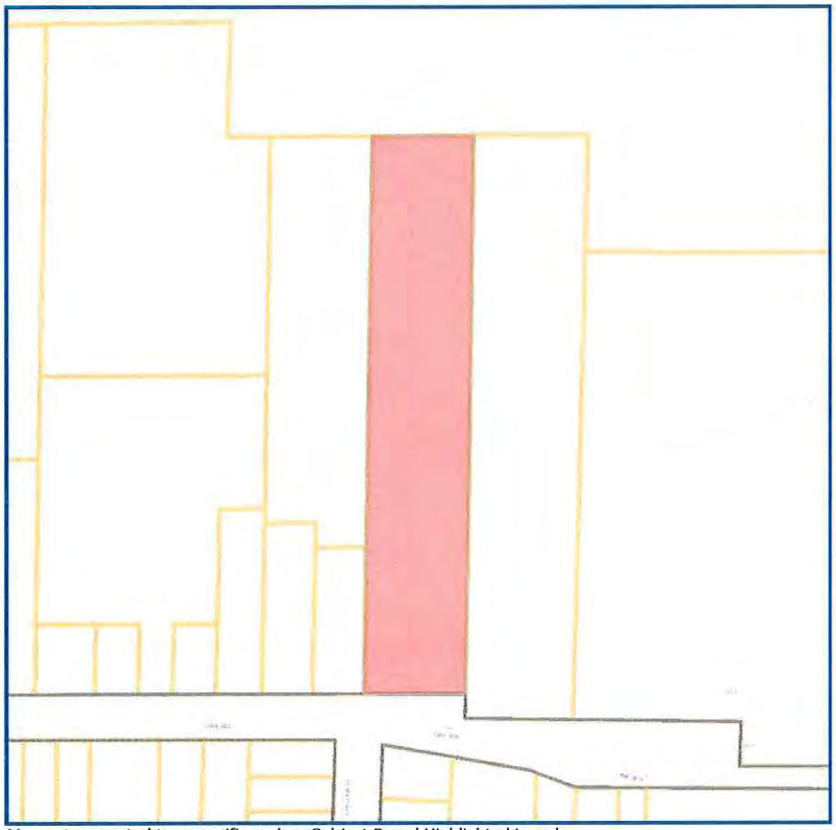
Muskegon County Property Viewer - Parcel Report

Parcel Information: 61-24-121-300-0019-00

Report Generated: 6/26/2018 10:41:47 AM

Owner Name:	CITY OF MUSKEGON
Property Address:	960 OAK AVE
	MUSKEGON, MI 49442

Assessed Value ($):		Property Class Code:	703
SEV Value ($):		Zoning (per Assessor):	R-1
Taxable Value ($):		GIS Acreage:	2.76645397
PRE %:			



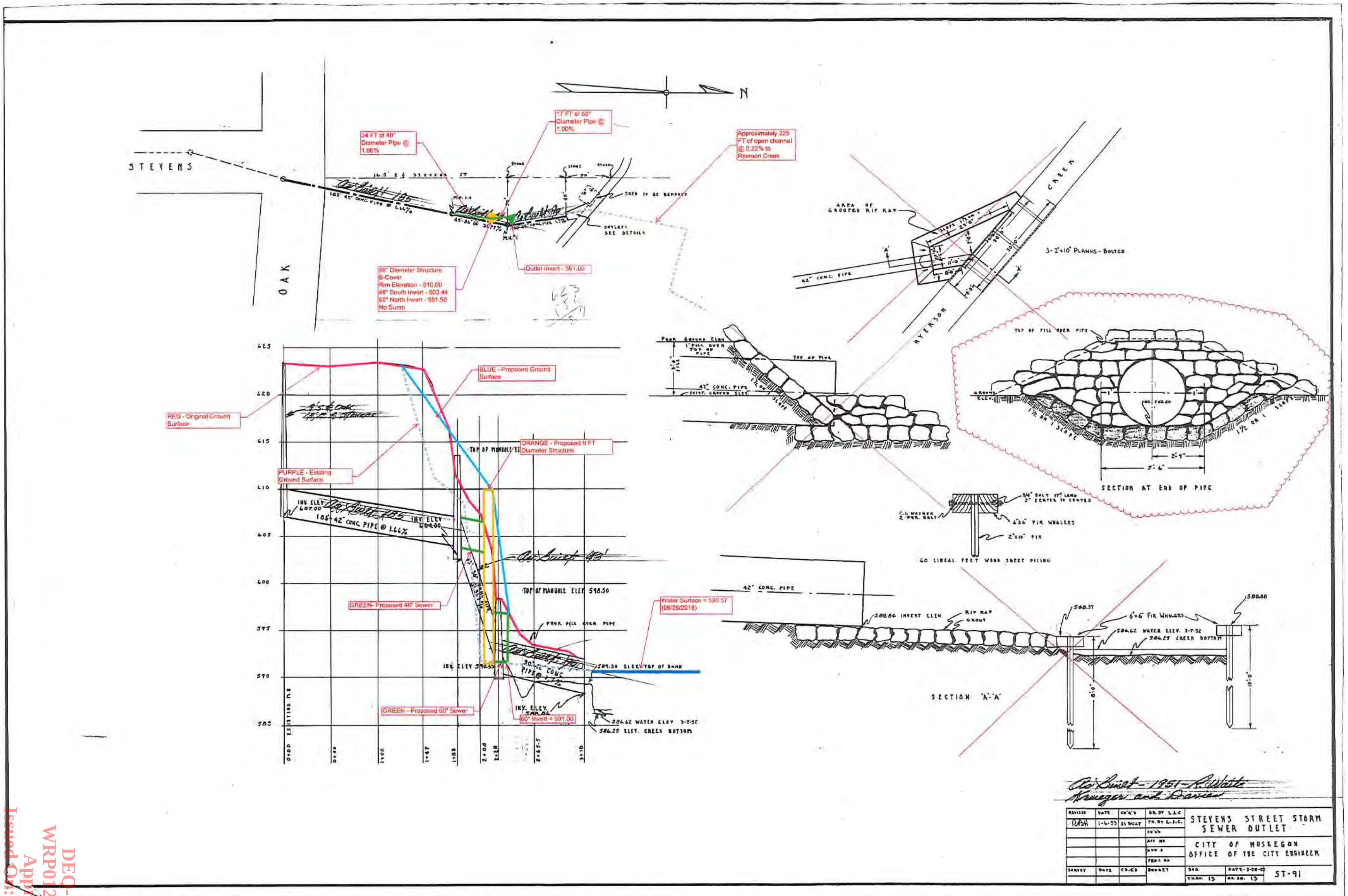
Map not presented to a specific scale   Subject Parcel Highlighted in red

Overview Location Map

See page two (2) for assessment roll description

MUSKEGON COUNTY GIS

This map/report is a user generated static output from the Muskegon County GIS Property Viewer mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.


STEVENS
OAK
N
34 FT of 48" Diameter Pipe @ 1.86%
17 FT of 60" Diameter Pipe @ 1.00%
Approximately 225 FT of open channel @ 0.22% to Ryerson Creek
96" Diameter Structure
B-Cover
Rim Elevation - 610.00
48" South Invert - 603.44
60" North Invert - 591.50
No Sump
Outlet Invert - 591.00
RED - Original Ground Surface
BLUE - Proposed Ground Surface
PURPLE - Existing Ground Surface
ORANGE - Proposed 8 FT Diameter Structure
GREEN- Proposed 48" Sewer
GREEN - Proposed 60" Sewer
Water Surface = 590.57 (06/26/2018)
60" Invert = 591.00
TOP OF MANHOLE ELEV 598.50
PROP. FILL OVER PIPE
42" CONC. PIPE
3-2"x10" PLANKS - BOLTED
AREA OF GROUTED RIP RAP
RYERSON
CREEK
SECTION AT END OF PIPE
60 LINEAL FEET WOOD SHEET PILING
6"x6" FIR WHALERS
RIP RAP GROUT
SECTION "A"-"A"
As Built - 1951 - R. Waite
Krueger and Davies
STEVENS STREET STORM SEWER OUTLET
CITY OF MUSKEGON
OFFICE OF THE CITY ENGINEER
ST-91

Stevens Street Storm Water Outfall

SCALE: 1 " = 41 '

0 0.004 0.008 0.016 0.024 0.032 Miles

Legend
- Top of Collapse
- Bottom of Collapse
- End of Creek
- Storm Manhole
- Discharge Point
- New Storm Gravity Main
- Existing Storm Gravity Main
- National Wetlands
- Affected Area

MUSKEGON
West Michigan's Shoreline City
www.shorelinecity.com
Engineering Department ©

Date: August 10th, 2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: 2018 Capital Improvement Projects – McGraft Park Lot Resurfacing

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SUMMARY OF REQUEST:

Award the resurfacing contract (H-1716) for crushing and shaping of the existing parking lot and driveway at McGraft Park to the low bidder. Three contractors submitted bids for this project as follows:

Accurate Excavators $108,512.29
Jackson-Merkey Contractors.......................................$112,453.90
Epic Excavating..$113,951.45

FINANCIAL IMPACT:

$108,512.29

BUDGET ACTION REQUIRED:

None at this time. The project will be funded through a planned capital improvement project and from the McGraft Park Trust Fund.

STAFF RECOMMENDATION:

Award the project to the low bidder, Accurate Excavators.

City Of Muskegon

Project Description: McGraft Park - Parking Lot Resurfacing **Project Number:** H-1716

Project Engineer: Fred Pease **Bid Opening:** 7-Aug-18

Line Item	Pay Code	Description	Units	Quantity	Engineers Estimate		Accurate Excavators		Jackson-Merkey Contrators		Epic Excavating	
					Unit Price	Total	Unit Price	Total	Unit Price	Total	Unit Price	Total
1	1500001	Mobilization, Max	LSUM	1	$ 3,322.00	$ 3,322.00	$ 5,000.00	$ 5,000.00	$ 17,800.00	$ 17,800.00	$ 10,000.00	$ 10,000.00
2	2030011	Dr Structure, Rem, Modified	Ea	2	$ 275.00	$ 550.00	$ 850.00	$ 1,700.00	$ 665.00	$ 1,330.00	$ 375.00	$ 750.00
3	2040021	Curb, Rem	Ft	443	$ 5.00	$ 2,215.00	$ 4.00	$ 1,772.00	$ 5.00	$ 2,215.00	$ 8.00	$ 3,544.00
4	2040055	Sidewalk, Rem	Syd	23	$ 5.00	$ 115.00	$ 25.00	$ 575.00	$ 12.00	$ 276.00	$ 16.00	$ 368.00
5	2080020	Erosion Control, Inlet Protection, Fabric Drop	Ea	6	$ 75.00	$ 450.00	$ 200.00	$ 1,200.00	$ 75.00	$ 450.00	$ 100.00	$ 600.00
6	2090001	Project Cleanup	LSUM	1	$ 500.00	$ 500.00	$ 1,200.00	$ 1,200.00	$ 500.00	$ 500.00	$ 100.00	$ 100.00
7	3020001	Aggregate Base	Ton	20	$ 16.00	$ 320.00	$ 24.00	$ 480.00	$ 25.00	$ 500.00	$ 20.00	$ 400.00
8	3050002	HMA Base Crushing and Shaping	Syd	3498	$ 1.50	$ 5,247.00	$ 4.23	$ 14,796.54	$ 3.75	$ 13,117.50	$ 2.25	$ 7,870.50
9	3050010	Material, Surplus and Unsuitable, Rem, LM	Cyd	316	$ 7.00	$ 2,212.00	$ 6.00	$ 1,896.00	$ 18.75	$ 5,925.00	$ 11.00	$ 3,476.00
10	3060021	Maintenance Gravel, LM	Cyd	25	$ 20.00	$ 500.00	$ 25.00	$ 625.00	$ 6.00	$ 150.00	$ 5.00	$ 125.00
11	4037001	Dr Structure, Adj, Add Depth, Modified	Ft	1.5	$ 250.00	$ 375.00	$ 380.00	$ 570.00	$ 520.00	$ 780.00	$ 300.00	$ 450.00
12	4037030	Dr Structure Cover, Modified	Lb	330	$ 1.25	$ 412.50	$ 1.25	$ 412.50	$ 1.10	$ 363.00	$ 1.25	$ 412.50
13	4037050	Dr Structure Cover, Adj, Case 1, Modified	Ea	3	$ 400.00	$ 1,200.00	$ 400.00	$ 1,200.00	$ 965.00	$ 2,895.00	$ 750.00	$ 2,250.00
14	5010031	HMA, 3C	Ton	310	$ 65.00	$ 20,150.00	$ 92.50	$ 28,675.00	$ 84.00	$ 26,040.00	$ 84.00	$ 26,040.00
15	5010034	HMA, 36A	Ton	310	$ 70.00	$ 21,700.00	$ 95.00	$ 29,450.00	$ 90.50	$ 28,055.00	$ 90.50	$ 28,055.00
16	8027001	Curb and Gutter, Conc, Det F4, Modified	Ft	472	$ 12.50	$ 5,900.00	$ 25.00	$ 11,800.00	$ 15.25	$ 7,198.00	$ 25.00	$ 11,800.00
17	8030010	Detectable Warning Surface	Ft	5	$ 40.00	$ 200.00	$ 50.00	$ 250.00	$ 55.00	$ 275.00	$ 60.00	$ 300.00
18	8030034	Sidewalk Ramp, Conc, 4 inch	Sft	57	$ 5.00	$ 285.00	$ 12.00	$ 684.00	$ 4.15	$ 236.55	$ 6.75	$ 384.75
19	8030044	Sidewalk, Conc, 4 inch	Sft	149	$ 3.00	$ 447.00	$ 9.00	$ 1,341.00	$ 3.10	$ 461.90	$ 4.75	$ 707.75
20	8110231	Pavt Mrkg, Waterborne, 4 inch, White	Ft	1093	$ 0.50	$ 546.50	$ 0.25	$ 273.25	$ 0.55	$ 601.15	$ 1.75	$ 1,912.75
21	8110293	Pavt Mrkg, Waterborne, for Rest Areas, Parks, & Lots, 4 inch, Bl	Ft	156	$ 0.65	$ 101.40	$ 0.25	$ 39.00	$ 0.55	$ 85.80	$ 1.95	$ 304.20
22	8117050	Pavt Mrkg, Waterborne, Handicap, Sym, Blue	Ea	2	$ 150.00	$ 300.00	$ 60.00	$ 120.00	$ 35.00	$ 70.00	$ 75.00	$ 150.00
23	8120022	Barricade, Type III, High Intensity, Lighted, Furn	Ea	2	$ 50.00	$ 100.00	$ 30.00	$ 60.00	$ 50.00	$ 100.00	$ 50.00	$ 100.00
24	8120023	Barricade, Type III, High Intensity, Lighted, Oper	Ea	2	$ 1.00	$ 2.00	$ 30.00	$ 60.00	$ 1.00	$ 2.00	$ 1.00	$ 2.00
25	8120170	Minor Traf Devices	LSUM	1	$ 500.00	$ 500.00	$ 1,000.00	$ 1,000.00	$ 1,200.00	$ 1,200.00	$ 9,000.00	$ 9,000.00
26	8120250	Plastic Drum, High Intensity, Furn	Ea	25	$ 17.00	$ 425.00	$ 10.00	$ 250.00	$ 8.00	$ 200.00	$ 15.00	$ 375.00
27	8120251	Plastic Drum, High Intensity, Oper	Ea	25	$ 1.00	$ 25.00	$ 10.00	$ 250.00	$ 1.00	$ 25.00	$ 1.00	$ 25.00
28	8120350	Sign, Type B, Temp, Prismatic, Furn	Sft	74	$ 4.00	$ 296.00	$ 2.25	$ 166.50	$ 2.00	$ 148.00	$ 7.50	$ 555.00
29	8120351	Sign, Type B, Temp, Prismatic, Oper	Sft	74	$ 1.00	$ 74.00	$ 2.25	$ 166.50	$ 1.00	$ 74.00	$ 1.00	$ 74.00
30	8160062	Topsoil Surface, Furn, 4 inch	Syd	300	$ 3.00	$ 900.00	$ 6.00	$ 1,800.00	$ 3.00	$ 900.00	$ 9.00	$ 2,700.00
31	8167011	Hydroseeding	Syd	300	$ 1.00	$ 300.00	$ 1.50	$ 450.00	$ 1.00	$ 300.00	$ 3.00	$ 900.00
32	8030030	Curb Ramp Opening, Conc	Ft	10	$ 10.00	$ 100.00	$ 25.00	$ 250.00	$ 18.00	$ 180.00	$ 22.00	$ 220.00
					Totals:	**$ 69,770.40**		**$ 108,512.29**		**$ 112,453.90**		**$ 113,951.45**
							As-Read	***$108,143.25***		***$112,453.90***		***$113,951.45***