City of Muskegon
City Commission Meeting
Agenda

July 25, 2023, 5:30 pm
Muskegon City Hall
933 Terrace Street, Muskegon, MI 49440

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE CITY OF MUSKEGON AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

To give comment on a live-streamed meeting the city will provide a call-in telephone number to the public to be able to call and give comment. For a public meeting that is not live-streamed, and which a citizen would like to watch and give comment, they must contact the City Clerk's Office with at least a two-business day notice. The participant will then receive a zoom link which will allow them to watch live and give comment. Contact information is below. For more details, please visit: www.shorelinecity.com

The City of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting with twenty-four (24) hours' notice to the City of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the City of Muskegon by writing or by calling the following: Ann Marie Meisch, MMC – City Clerk, 933 Terrace Street, Muskegon, MI 49440; 231-724-6705; clerk@shorelinecity.com

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WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 7/25/23	Title: MCC Student Recognition
Submitted By: Emily Morgenstern	Department: Police Department
Brief Summary: Recognition of Muskegon Community College graphic design students for their work designing the City's community bus.	
Detailed Summary & Background: The Police Department would like to recognize Alexander Smith and Alex Near for their hard work on designing the wrap for the new City community bus donated by Ramos and Sons. Alexander and Alex are students at Muskegon Community College working on their Associate of Arts and Science in Graphic Design. Their creativity skills captured the essence of our great city and will be displayed throughout our neighborhoods at various community engagement events.	
Goal/Focus Area/Action Item Addressed:	
Amount Requested: N/A	Budgeted Item: Yes ☐ No ☐ N/A ■
Fund(s) or Account(s):	Budget Amendment Needed: Yes ☐ No ☐ N/A ■
Recommended Motion:	
Approvals: Immediate Division Head ☐ Information Technology ☐ Other Division Heads ☐ Communication ☐ Legal Review ☐	Guest(s) Invited / Presenting: Yes ■ No ☐


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WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk

Brief Summary: To approve the minutes of the June 27, 2023 Regular Meeting, July 10, 2023 Worksession, and July 11, 2023 Regular Meeting.

Detailed Summary & Background:

Goal/Focus Area/Action Item Addressed:

Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):

Recommended Motion: To approve the minutes.

Approvals: *Get approval from division head at a minimum prior to sending to the Clerk.*

Immediate Division Head	☐	Information Technology	☐
Other Division Heads	☐	Communication	☐
Legal Review	☐		

Guest(s) Invited / Presenting

Yes ☐

No ☐

For City Clerk Use Only:

Commission Action:

City of Muskegon

City Commission Meeting

Minutes

June 27, 2023, 5:30 pm
Muskegon City Hall
933 Terrace Street, Muskegon, MI 49440

Present:	Mayor Ken Johnson Commissioner Rachel Gorman Commissioner Rebecca St.Clair Commissioner Eric Hood Vice Mayor Willie German, Jr. Commissioner Michael Ramsey Commissioner Teresa Emory
Staff Present:	City Manager Jonathan Seyferth City Clerk Ann Meisch City Attorney John Schrier Deputy City Clerk Kimberly Young

1. Call To Order

Mayor Johnson called the Muskegon City Commission meeting to order at 5:30 p.m.

2. Prayer

Minister Rex Griggs, Zion Baptist Church, opened the meeting with a prayer.

3. Pledge of Allegiance

The Pledge of Allegiance to the Flag was recited by the Commission and the public.

4. Roll Call

As recorded above

5. Honors, Awards, and Presentations

6. Public Comment on Agenda Items

No public comments were received.

7. Consent Agenda

Action No. 2023-70

Motion by: Commissioner St.Clair
Second by: Commissioner Ramsey

To accept the consent agenda as presented, minus item 7d, 7e, 7h, 7k.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.a Approval of Minutes - City Clerk

To approve the minutes of the May 23, 2023 Regular Commission Meeting.

STAFF RECOMMENDATION: To approve the minutes.

7.b Arena Concessions - Finance/Arena

Staff is seeking City Commission approval to enter into a 3-year Agreement with HCK Management to provide concession services at Trinity Health Arena.

For several years, Trinity Health Arena has outsourced its concessions to a 3rd party management team. The City of Muskegon is seeking a qualified team to provide Concession Management duties including, but not limited to: tracking sales, labor and food costs, hiring staff, cleaning concession, inventory, ordering supplies/goods, and working with arena management to continue to provide and enhance a great customer experience.

It is important that arena management is able to control all food, beverage, and expenses associated with concessions. An RFP was issued for concession management and HCK Management was the only proposal submitted. HCK Management is qualified to provide this service.

STAFF RECOMMENDATION: To award the proposal to manage concessions at Trinity Health Arena to HCK Management for a 3 year term beginning 9/1/2023 and ending 9/1/2026, subject to negotiation and a contract will be presented to the City Commission.

7.c **Rezoning of 1043 Washington Avenue - Planning**

Request to rezone the property at 1043 Washington Avenue from R-2, Medium Density Single Family Residential to Form Based Code, Neighborhood Edge, by FMA Rentals, LLC.

The existing building has 5 residential units and a commercial suite. The owner would like to convert the commercial suite to another residential unit. The FBC, Neighborhood Edge designation would allow for all residential units or a commercial suite, so it could be converted back to commercial again in the future as the market demands.

STAFF RECOMMENDATION: To approve the request to rezone the property at 1043 Washington Ave from R-2 to Form Based Code, Neighborhood Edge.

7.f **MEDC RAP 2.0 Grant - Development Services**

Staff is requesting approval of the attached resolution for inclusion with our MEDC Revitalization and Placemaking (RAP) 2.0 grant application due June 30th, 2023 and commit to funding a local match obligation of $250,000 for Hackley Park electrical upgrade project costs in future fiscal years, if the project is selected.

In September 2022, the city was awarded $6M in grant funding as part of "Round 1" of the MEDC RAP 1.0 program. MEDC is continuing the program into 2023 as RAP 2.0. The program would provide access to grant funds for gap financing of place-based infrastructure development, real estate rehabilitation and development, and public space improvements. https://www.michiganbusiness.org/rap/2/

This tool provides access to real estate and place-based infrastructure development gap financing in the form of grants of up to $5M per project for real estate rehabilitation and development, grants of up to $1M for public space place-based infrastructure per project, and grants of up to $20M to local or regional partners who develop a subgrant program.

The city's grant application seeks $3.25M to fund the following projects:

$1M in place-based infrastructure/public space funding to support the redevelopment and revitalization of the historic Hackley Square at 349 W. Webster Ave as well as Hackley Park. At this time, commitment of the $250,000 local match is an unbudgeted cost and would be accounted for in a future reforecast. A review of savings within the Public Works budget will serve to identify the funds.

$2M for the rehabilitation of the vacant Catholic Charities of West Michigan building at 1095 Third St. The City Commission approved a purchase agreement for the building and surrounding parking. As of March 2023, the city is under contract with a new developer, West Urban Properties, to construct a new mixed-use development.

AMOUNT REQUESTED: $3,250,000

AMOUNT BUDGETED: $0

FUND OR ACCOUNT: 101-901-801-923XXX

STAFF RECOMMENDATION: To approve the resolution and authorize the Clerk to sign and commit to funding a local match obligation for Hackley Park electrical upgrade project costs in future fiscal years if the project is selected.

7.g **End of Year Budget Amendment - Finance**

At this time staff is asking for approval of the End of Year Budget Amendment for FY2022-23 budget year. Staff has prepared the End of Year Budget Amendment for the 22-23 budget year, highlights of the amendments are as follows:

101 General Fund

Revenues:

101-000-438 Income Tax collections have been better than projected for the 4th Quarter. We can increase revenue from $10,750,000 to $11,000,000

101-000-482 Electric Permits revenue should go up to $210,000 from $195,000

101-000-483 Plumbing Permits revenue should be changed to $112,000 from $105,000

101-000-484 Heating Permits revenue should be changed to $157,000 from $146,000

101-000-486 Rental Property revenue should be changed to $427,000 from $400,000

101-000-696-004963 Loan Proceeds revenue is recorded for the Fire Truck loan for $761,603

101-000-684-004800 Misc.& Sundry revenue should be changed to $142,000 from $100,000.

Expenditures Amendments

City Commission Dept 101- Increase expenditures by $12,000 due to MML expenditures

City Promotions & Public Relations Dept 103- Increase expenditures by $38,000 due expenses created by the new Community Relations positions.

Finance Department Dept 202- Increase expenditures by $8,000 due to 8% payroll for nonunion personnel

Income Tax Dept 205- Increase expenditures by $41,000 mainly due to postage increases, salary increases and insurance payout for both Union and Non-Union.

City Clerk Dept 215- Increase expenditures by$56,000 mainly due to postage increases, salary increases and insurance payout for both Union and Non-Union.

City Treasurer Dept 253- Increase expenditures by $41,000 mainly due to postage increases, salary increases and insurance payout for both Union and Non-Union.

City Assessor Dept 257 Increase expenditures by $12,000 due to some unexpected tax appeal fees.

Insurance Services 272 – Increase expenditures by $195,000 due lawsuits and insurance claims. MMRA requires a that members have a minimum self-insured retention amount.

Police Dept 301- Increase expenditures by $291,000 due to payroll and overtime.

Fire Dept 336 - Increase expenditures by $85,000 due to payroll and overtime.

Building Dept 387- Increase expenditures by $610,000 because most of the permit fees are up significantly and Safebuilt gets a of the revenue generated from permits.

Central Fire Station 340 – Increase expenditures by $10,000 due utility costs.

Community Event Support Dept 446 - Increase expenditures by $10,000 to cover landscaping, snow plowing, and miscellaneous fees. These costs should be offset by additional revenues.

Planning Dept 701-Increase expenditures by $105,000 off the expense for the Marihuana Social Equity and Education programs, to cover the city's participation in the countywide broadband study, additional site prep for the infill housing, and other miscellaneous items.

Forestry Dept 771- Increase expenditures by 10,000 due contractual services costs and supplies.

Capital Projects 901- Increase expenditures by $761,603 for the purchase of the new fire truck. These costs were previously approved by Commission and we required to add this asset to our books.

Debt Service 906- Increase expenditures by $1,300 due Agent Fees and Interest adjustments.

Transfer 999- Additional $102,000 to the Arena

<u>234 Pigeon Hill Brownfield</u>

<u>Revenues:</u>

Tax collections need to be bumped up by $840

<u>Expenditures Amendments</u>

Expenditures need to match the increase in revenue by the same amount of $840

<u>237 Terrace Point Brownfield</u>

<u>Revenues:</u>

Property Tax values and Tax Capture exceed original projects by $97,000.00

<u>Expenditures Amendments</u>

Expenditures need to match the increase in revenue by the same amount of 97,000

<u>252 Farmers Market</u>

<u>Revenues:</u>

Increase revenues by $43,000 this includes reimbursement from the DDA

Expenditures Amendments

Increase expenditures by $60,000 ($30,000 for contractual and misc. services and $30,000 for an ice maker and cameras.

This year the Farmer's Market did not require any funds from the General Fund.

254 Arena

Expenditures Amendments

Increase expenditures by $102,00 due to payroll increases and contractual services.

445 Public Improvement

Expenditures Amendments

Increase expenditures by $100,000 to cover unexpected project costs on capital projects.

482 STATE GRANTS

Expenditures Amendments

Increase expenditures by $4,750,000 for ARPA Expenditures.

643 ENGINEERING SERVICES

Expenditures Amendments

Increase expenditures by $25,000 due to salary rate increases.

STAFF RECOMMENDATION: To approve the End of Year Budget Amendment as presented.

7.i Transfer of Obsolete Property Rehabilitation Exemption Certificate #3-016-0027 from P & G Holdings NY, LLC to the new owners, Shaw QOZB2, LLC - Economic Development

Shaw QOZB 2, LLC has requested an Obsolete Property Rehabilitation Exemption Certificate transfer for the property 920 Washington Avenue.

On July 12, 2016, the City Commission approved an Obsolete Property Certificate to P&G Holdings NY, LLC for 920 Washington Ave. State issued this certificate on 12/13/2016.

Shaw QOZB 2, LLC has purchased the property for redevelopment that will result in adaptive reuse of nearly 630,000 square feet of dilapidated former industrial space into a lively mixed-use development. The project is projected to result in over $120 million in tax capture over 20 years between property taxes and new income taxes.

The previous owner (P&G Holdings NY, LLC) had an OPRA parcel on the property and needs to be transferred over to the new owner.

STAFF RECOMMENDATION: to approve the adoption of the following resolution approving the transfer of the Obsolete Property Rehabilitation Exemption Certificate # 3-16-0027 from P&G.

7.j **Contract Award - City Hall Boiler Replacement - Public Works**

Staff is requesting authorization to enter into a contact with Hurst Mechanical, in the amount of $534,964 for the replacement of the boiler(s) and related equipment at City Hall.

Bids were solicited for the replacement of the boiler at City Hall after a design was completed by Rhodes Engineering. Hurst Mechanical was the only bid received, however the bid is in line with the engineer's estimate and Hurst has performed quality work for the City in the past. Furthermore, the tight timeframe to complete the project before cold weather returns has led staff to recommend award to Hurst on the basis of timing, quality and a reasonable price.

Hurst's bid is attached. They recommend adding $17,500 in asbestos abatement costs, which staff agrees with, and staff has also requested a performance bond for an additional $5,000 cost to ensure the work is done properly and timely.

This work is budgeted in FY24 (up for adoption this evening), but again due to the tight timeframe before cold weather staff requests approval tonight to avoid losing the two weeks until the 7/10 meeting.

STAFF RECOMMENDATION: To authorize staff to enter into a contact with Hurst Mechanical. in the amount of $534,964 for the replacement of the boiler(s) and related equipment at City Hall.

7.l **DWRF Lead Water Line Engineering - Public Works**

Staff requests approval to enter into a contract with Prein & Newhof, Inc. for engineering services related to lead service line replacements under the DWRF program.

At the meeting on October 25, 2022, Commission authorized engineering services for several projects related to the FY23 DWRF & CWSRF program through the state. That authorization included approval for work in the Glenside Neighborhood, for the reconstruction of Wilcox, Thompson and Edgewater streets in the Bluffton neighborhood, for the reconstruction of Morton Avenue from Lincoln to Denmark in Lakeside, for repairs to the Harbour Towne and Edgewater lift stations also in Bluffton, and for the replacement of approximately 500 lead service lines in the City. The authorization included $1,319,600 in funds from the FY23, FY24 and FY25 budgets.

Prein & Newhof and DPW have recently discovered that while that item included the lead service line work in the description of the cover sheet, it did not include an actual proposal for that work – meaning the cost of the work was not included. Upon further review, a proposal by Prein & Newhof was found from January of this year in the amount of $296,400. Only the design portion of the proposal ($38,000) is funded by City funds-on-hand; the much larger construction engineering portion goes into the bond and qualifies for the principal forgiveness and other program benefits.

This work is critical to both our lead service line replacement efforts (required by state regulations and in the best interests of our residents and water system regardless), as well as to the DWRF program we have benefitted from lately. In fact, two weeks from now DPW staff will return with the final details of this program. Current information from EGLE indicates we expect to receive 75% forgiveness on the drinking water portion of the loan this year, potentially worth over $6,900,000 in grant and aid.

This year is the final year of three-year program whereby Prein & Newhof was selected as one of two firms to perform the City's state revolving fund work. Based on that process, Commission's prior support of this engineering work being awarded to Prein & Newhof, and the critical nature of this work that will lead, in part, to a substantial award of grant and aid from the state, staff requests this additional cost be awarded to Prein & Newhof.

AMOUNT REQUESTED: $296,000 Total - $38,000 (Design/Cash) and $258,400 (Construction/Bond)

AMOUNT BUDGETED: $150,000 is budgeted in FY24 for all DWRF and CWSRF engineering fees. Only the $38,000 design portion counts against this; the remainder will be bonded.

FUND OR ACCOUNT: 591 (Water Fund)

STAFF RECOMMENDATION: To authorize staff to modify the existing professional services agreement with Prein & Newhof for additional services related to the FY23 DWRF lead service line replacements.

7.m <u>EGLE Brownfield Loan Application - City of Muskegon and the Meadows LLC - Economic Development</u>

The City of Muskegon has been invited to submit an EGLE Brownfield Loan Application with The Meadows LLC as the Developer.

Fishbeck (the consultant) has submitted a proposal on behalf of the City of Muskegon for a $1M loan. The pre-vetting process for the EGLE Loan has been completed and The City of Muskegon is invited to apply for this project with The Meadows LLC as the developer.

The Harbor 31 project (as a whole redevelopment) is a planned mixed-use development on approximately 25 acres of Muskegon Lake waterfront in downtown Muskegon. Proposed uses include a hotel, 33-single and multifamily residential units, a two-story office building, 48 rental townhomes, two four-story buildings with grade level retail and apartments above, a 100-unit waterfront apartment building, a marina, and an in/out boat service sales and rental operation. For these uses to safely occur, significant due care measures are required to mitigate environmental concerns. Vapor barriers and venting systems are necessary beneath proposed site structures to prevent potential intrusion of harmful vapors. The cost to implement due care is significant and poses a threat to project completion. Brownfield funding will be used to complete due care activities for The Meadows and The Commons so that the development can be safely completed. The Meadows currently owns the property where The Commons are located. Eventually The Commons will split from The Meadows and form a separate LLC and Brownfield Plan.

Staff Comments:
The focus areas for this loan include the projects below:

- 170 Viridian Drive (The Meadows)- This parcel includes the development of 22 residential rental townhomes known as the Meadows at Harbor 31. Additional analytical testing is estimated at $25,000 for this parcel and includes the collection of soil, groundwater and/or soil gas samples across this parcel to determine if vapor mitigation is necessary at this parcel.
- 630 & 633 Terrace Street (The Commons East and West)- These

parcels are located along the eastern and western sides of the entrance drive to the Harbor 31 Redevelopment. These parcels will each have a mixed-use building, approximately 30,000 square feet in size. Therefore, approximately 60,000 square feet of vapor mitigation is necessary on these parcels. It is anticipated that each building will need a below slab vapor barrier and/or active mitigation. The projected cost for vapor mitigation system construction is approximately $8/sq foot, equating to an estimated $480,000.

- Total costs are expected to be $116,233,000. This includes assessment/investigation, demolition, abatement, due care activities, response activities, non-environmental public structure, Non-Environmental Site Preparation, Contingency (up to 15% of grant/loan), Administration (up to 3% of grant/loan), EGLE Project Sign (grant/loan requirement), Grant Closeout Report (grant/loan requirement), Capital Investment (whole site), and State of Michigan Budget Appropriation.

The applicant for the EGLE Brownfield Loan is the City of Muskegon. The applicant project contact will be Contessa Alexander. The applicant signing authority will be Jonathan Seyferth. The project consultant is Kirk Perschbacher, Fishbeck. The project contact will be responsible for the day to day operations, working closely with the entire team. This person will work with the project consultant to send in quarterly invoices to EGLE for reimbursement. The applicant signing authority will legally sign off on all documents on behalf of The City of Muskegon. The proper vetting for this Loan has been completed and The City of Muskegon is invited to apply.
The following documents will be required with the application:

- A resolution adopted by the city, verifying that the city is willing to accept the loan
- A Development / Reimbursement Agreement

STAFF RECOMMENDATION: To approve the resolution for the City of Muskegon to apply for the EGLE Brownfield Loan application with The Meadows LLC as the Developer and authorize the Mayor and Clerk to sign.

7.n **<u>EGLE Brownfield Loan Application - Downtown Development Authority, Parkland Properties of Michigan, 965 W. Western Ave., 920 & 930 Washington Ave. - Economic Development</u>**

The Downtown Development Association (DDA) has been invited to submit an EGLE Brownfield Loan Application with Parkland Properties of Michigan as the Developer for 965 W. Western Ave., 920 & 930 Washington Ave (Shaw Walker Project).

Environmental Resource Group (the consultant) submitted a proposal on behalf of the DDA for a $1M loan. The pre-vetting process for the EGLE Loan has been completed and the DDA is invited to apply for this project with Parkland Properties of Michigan as the developer.

There are considerable costs related to the environmental activities for the former Shaw Walker Furniture property. The developer is seeking $1,000,000 from the EGLE Brownfield Redevelopment Program ($1M loan). These funds will offset some of the environmental costs for the activities that are described below.

- Vapor mitigation systems for the existing building
- Vapor mitigation system performance monitoring and reporting
- Asbestos and hazardous materials abatement
- Consultant oversight and reporting

Proposed schedule for eligible activities:

- The project is expected to begin in the fall of 2023 with vapor system pilot testing and the start of asbestos / hazardous materials abatement.

The project will result in adaptive reuse of nearly 630,000 square feet of dilapidated former industrial space into a lively mixed-use development. The project is projected to result in over $120 million in tax capture over 20 years between property taxes and new income taxes.

Staff Comments:

The applicant for the EGLE Brownfield Loan/ Grant is the City of Muskegon Downtown Development Authority. The applicant project contact will be Peter Wills. The applicant signing authority will be Jonathan Seyferth. The project consultant is Jackie Freiberg, Environmental Resources Group.

The project contact will be responsible for the day to day operations, working closely with the entire team. This person will work with the project consultant to send in quarterly invoices to EGLE for reimbursement.

The applicant signing authority will legally sign off on all documents on behalf of the DDA.

The proper vetting for this Loan has been completed and the DDA is invited to apply. The following documents will be required with the application:

- A resolution adopted by the city, verifying that the city is willing to accept the loan
- A Development Agreement is underway.

STAFF RECOMMENDATION: To approve the resolution for the DDA to apply for the EGLE Brownfield Loan application with Parkland Properties of Michigan as the Developer and authorize the Mayor and Clerk to sign.

7.d **Approval of contract for Mediation & Restorative Services - Planning**

To approve the contract for Mediation & Restorative Services to provide education, outreach, and prevention services to at risk youth.

At the April Work Session meeting, the Commission heard a proposal from Mediation & Restorative Services to provide education, outreach, and prevention services to at risk youth. The Commission decided to proceed with their services and asked staff to prepare a contract.

Services will include one-on-one accountability sessions, monthly group accountability panels, educating neighborhood associations, monthly parent/child discussion groups, discuss youth prevention efforts at local dispensaries, and coordination with the Muskegon Police Department and the Coalition for a Drug Free Muskegon County.

STAFF RECOMMENDATION: To approve the contract with Mediation & Restorative Services and authorize staff to sign.

Action No. 2023-71(d)

Motion by: Vice Mayor German
Second by: Commissioner St.Clair

To approve the contract with Mediation & Restorative Services and authorize staff to sign.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.e <u>**MEDC RAP 1.0 Grant - Development Services**</u>

Staff is requesting approval of the attached resolution and authorization to accept and distribute a 2022 MEDC RAP 1.0 State Grant of $6,000,000, awarded on September 7, 2022, to support two real estate rehabilitation projects – 880 First St LLC & Great Lakes Development Investments, Inc. The city will enter into Subgrant Agreements to distribute $3,000,000 to 880 First St, LLC and $3,000,000 to Great Lakes Development Investments, Inc. for projects costs incurred as part of their respective redevelopment projects.

The city applied for and received a 2022 MEDC Revitalization and Placemaking (RAP) 1.0 grant in the amount of $6M in the Fall 2022 to support the 880 First St, LLC & Great Lakes Development Investments, Inc, real estate rehabilitation projects.

The Revitalization and Placemaking Program ("RAP 1.0 Program") was an incentive program that deployed state funding to address the COVID-19 impacts and community revitalization needs in communities to invest in projects that enable population and tax revenue growth through rehabilitation of vacant and blighted buildings and historic structures, rehabilitation and development of vacant properties, and development of permanent place-based infrastructure associated with social zones and traditional downtowns, outdoor dining, and place-based public spaces.

The city will enter into Subgrant Agreements to distribute $3,000,000 to 880 First St, LLC and $3,000,000 to Great Lakes Development Investments, Inc. as they are two projects key to meeting the ongoing housing needs of our community.

AMOUNT REQUESTED: $6,000,000

AMOUNT BUDGETED: $0

FUND OR ACCOUNT: TBD

STAFF RECOMMENDATION: To approve the resolution of support and authorize the Clerk to sign.

Action No. 2023-71(e)

Motion by: Vice Mayor German
Second by: Commissioner St.Clair

To approve the resolution of support for the MEDC RAP (Redevelopment and Placement) Grant, and authorize the Clerk to sign.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.h **Real Estate Purchase Agreement for The Splash Pad - Downtown Muskegon Development Center No. 2, Association and the City of Muskegon - Economic Development**

A Real Estate Purchase Agreement has been submitted between The Downtown Muskegon Development Center No. 2, Association (the “Seller”) and The City of Muskegon (the “Buyer”) for the purchase of Unit 10 (the “Property”) referred to as the Western Avenue Splash Pad.

A survey plan was created by Gower Professional Surveying, P.C. that is included in the agenda packet. This survey conveys the Downtown Muskegon Development Center No. 2 boundaries, the Muskegon County condominium plan No. 162. This area encompasses ten units between Terrace, Morris, First, and Clay. The Property is commonly known as the Western Avenue Splash Pad and is 8066 sq. ft.

This purchase agreement was created in order for Unit 10 to be eliminated from the Downtown Muskegon Development Center No. 2 boundaries, and to be purchased by the City of Muskegon.

As described in the Purchased Agreement:

- The Seller shall convey the Property to the Buyer free and clear of all liens and encumbrances. Seller is also responsible for all real estate taxes and assessments that have been billed prior to the effective date.
- Moving forward the Buyer will be held accountable for all responsibilities, including repairs and maintenance after effective date.
- All fixtures and equipment are included at no additional costs.

- Both parties agree that the property is to be sold as is.
- If either party does not perform the terms and conditions of this agreement within 10 days following receipt of written notice from either Seller or Buyer, the Seller or Buyer can elect to terminate this Agreement by written notice and neither party shall have further obligations under this Agreement.
- Closing costs to be paid by Seller include the following: recording the deed, the premium for the owner's policy of title insurance, any inspection fees, closing fees charged by the Title Company, all other costs and fees, including attorney fees, it incurred in connection with this transaction including, the preparation of this Agreement, and any related closing documents.
- All parties shall deliver the Warranty Deed and all other documents that are required by this Agreement

AMOUNT REQUESTED: $1,188.75

AMOUNT BUDGETED: $0

FUND OR ACCOUNT: Planning

STAFF RECOMMENDATION: To approve the Real Estate Purchase Agreement made between Downtown Muskegon Development Center No. 2, Association and The City of Muskegon for the purchase of Unit 10 (the "Property") referred to as the Western Avenue Splash Pad authorizing the Deputy City Manager to sign.

Action No. 2023-71(h)

Motion by: Commissioner Ramsey
Second by: Commissioner Gorman

To approve the Real Estate Purchase Agreement made between Downtown Muskegon Development Center No. 2, Association and The City of Muskegon for the purchase of Unit 10 (the "Property") referred to as the Western Avenue Splash Pad authorizing the Deputy City Manager to sign.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.k <u>Water and Sewer Systems Debt Service Fee - Public Works</u>

Staff requests authorization to institute a debt service fee for both the water and sewer systems, to appear monthly on each water bill to cover the debt payments by each system in the prior fiscal year.

On March 13, 2023 staff presented a synopsis of the water system finances including that the water system is expected to be in debt to other City funds by about $2,000,000 at the close of the 22-23 fiscal year. This is due to increasing costs of treatment and capital-intensive repairs to the system.

Staff presented different funding options, with consensus settling on a "debt service fee." This would institute a fee on each water bill, the total of which would reimburse the system for the amount of debt paid in the prior fiscal year (for example, the fee proposed at this time will reimburse the system for the debt paid in the fiscal year ending June 30, 2022). Each year, staff will make an accounting of the amount of debt paid be each of the systems and will present adjustments to the fee for consideration by the Commission. This will more directly tie the projects the City performs to the amount of the water bill, and will allow the fee to be reduced as certain bonds or other debts fall off of the system books.

The fee will be distributed on a *meter equivalency basis*, meaning a typical residential account will pay the fee at a rate of "one," while commercial and industrial accounts will pay the fee at a potentially higher rate depending on the size of their water meter. Irrigation accounts will not pay the fee, assuming they are tied to a domestic water account at the same address. Attached is a breakdown of the meter equivalency calculations using factors from the American Water Works Association (AWWA).

The water system paid $1,206,318.45 in debt payments for the fiscal year ending June 30, 2022, and the sewer system paid $473,493.59 for the same period. Using the attached chart, we anticipate the fee will be $6.09 per month for a residential account on the water system, and $2.39 per month for a residential account on the sewer system.

City Code states that the City Commission sets the water and sewer rates by resolution. The attached resolution will institute the fee and establish it at the rates described herein. The fee will need to be established by a similar resolution each year around this time to adjust the fee for the actual amount of debt incurred each year as described above.

STAFF RECOMMENDATION: To approve the resolution establishing the Fiscal Year 2023-24 Debt Service Fees for the water and sewer system.

Action No. 2023-71(k)

Motion by: Commissioner Ramsey
Second by: Vice Mayor German

To approve the resolution establishing the Fiscal Year 2023-24 Debt Service Fees for the water and sewer system.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

8. Public Hearings

8.a <u>Brownfield Plan Amendment, 880 1st Street, 216 West Clay Avenue - Economic Development</u>

880 First Street, LLC has submitted a Brownfield Plan Amendment for the 880 1st Street Rehabilitation & New Construction Project- a mixed- use redevelopment project located at 880 1st St., and 216 West Clay Ave.

880 1st Street Rehabilitation & New Construction Project is a mixed- use redevelopment project with a total capital investment of $28.8 million. The projects eligible property is approximately 0.49 acres that consists of one parcel and a small portion of another adjacent (880 1st St. and 216 W. Clay Avenue. The property is considered an eligible facility as defined by Act 381.

The total number of new jobs is 109, which includes construction and support staff, managerial and administrative employees. There will be 1,384 rentable square feet commercial business space containing a retail/service provider, 7,700 rentable square feet multi-purpose/co-working and event space, and 57 multifamily residential apartments offering attainable workforce housing (units between 80% and 120% of the AMI according to current MSHDA affordability guidelines). Vertical construction is scheduled to begin in the Spring 2024 and anticipated to be completed by Summer 2026. The total estimated plan capture for eligible activities is for 35 years, 2025-2059.

After the project is completed the total new taxes received by taxing units is $2,366.873, total captured by the BRA is $6,201,788, and total new taxes is $8,568,661.

During the 35 years tax capture period, the total tax capture is $13,481,830 which includes local taxes (to be reimbursed to the developer for eligible activities) of $5,225,029, state school taxes (to be reimbursed to the developer for eligible activities) at $6,935,640, State of Michigan Brownfield Redevelopment Fund (MBRF) (Maximum of 25-Year period for tax capture) of $274,220, BRA Local Brownfield Revolving Fund of $872,283, and the Brownfield Redevelopment Authority (BRA) Administration of $174,658.

Eligible activities will include EGLE eligible activities such as assessments, due care planning, and due care activities. MSF non-environment activities eligible activities include demolition, lead/asbestos activities, infrastructure improvements, and site preparation activities. The plan includes a 15% contingency for environmental and non-environmental activities and 5% in interest.

The Brownfield Redevelopment Authority approved the Brownfield Plan on June 13th, 2023.

STAFF RECOMMENDATION: To close the Public Hearing and approve the resolution for the Brownfield Plan Amendment for the 880 1st Street Rehabilitation & New Construction Project authorizing the City Clerk and City Mayor to sign.

Public Hearing Commenced:

Contessa Alexander, Development Analyst from City of Muskegon Development Services Division, presented an overview of the proposed redevelopment project.

Eric Helzer, 880 First Street development team, gave a presentation regarding the rehabilitation and new construction project at 880 First Street.

Brianna Scott, 880 First Street development team, addressed the commission about her excitement about the project which is taking longer than expected.

No public comments.

Action No. 2023-72

Motion by: Commissioner Ramsey
Second by: Vice Mayor German

To close the Public Hearing and approve the resolution for the Brownfield Plan Amendment for the 880 1st Street Rehabilitation & New Construction Project authorizing the City Clerk and City Mayor to sign.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

9. Unfinished Business

9.a Transmittal of 2023-24 Proposed Budget - Finance

At this time staff is transmitting to the City Commission the proposed budget for fiscal year 2023-24 which starts July 1, 2023. Both hardcopy and electronic versions of the budget have been distributed to Commissioners. Additionally, the budget is available for inspection on the City's website and at the City Clerk's office. The proposed budget was reviewed in detail with staff at the June 12, 2023 work session. A public hearing on the budget was held at the regular Commission meeting on June 13, 2024. City ordinance requires that the budget be adopted by the Commission on or before the second Commission meeting in June. https://muskegon-mi.gov/proposed-budget-for-2023-2024/

STAFF RECOMMENDATION: To approve the proposed budget for fiscal year 2023-24.

Mayor Johnson invited the public comment on the budget. No public comments were received.

Action No. 2023-73(a)

Motion by: Commissioner Emory
Second by: Commissioner Ramsey

To approve the proposed budget for fiscal year 2023-24.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

10. New Business

10.a Distribution of Master Plan to Notice Group - Planning

The Planning Commission has prepared the proposed master plan update and is submitting it to the City Commission for distribution to the notice group for a 63-day review.

The notice group includes the planning commissions of all contiguous local units of government, the Muskegon County Board of Commissioners, each public utility company, railroad company, and public transportation company in the City, and any other governmental entity that has requested to be notified.

The plan can be viewed at this link.

STAFF RECOMMENDATION: To approve distribution of the proposed master plan to the notice group for a 63-day review period.

Planning Director, Mike Franzak, provided an overview of the Master Plan Update. The Master Plan is required to have a 63-day review period before it can be adopted. The presentation included goals and recommendations in four major areas. There were 27 public input sessions over the past few years.

Action No. 2023-74(a)

Motion by: Commissioner St.Clair
Second by: Commissioner Hood

To approve distribution of the proposed master plan to the notice group for a 63-day review period.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

11. Any Other Business

11.a ARPA Committee Update

City Manager Jonathan Seyferth informed the Commission that the ARPA Community Grant Committee has been meeting and staff is looking for direction on how and when the City Commission would like to review recommendations. There seems to be consensus that a special meeting will be scheduled. The City Manager and Clerk will work with the Commission to determine a date.

11.b ARPA Community Grant Meetings - selection criteria

Vice Mayor German raised concerns about the application review process that the committee is using and would like to know what criteria, etc., are being used to determine how to award the grant money. City Manager Jonathan Seyferth spoke to the process used by the committee to score the applications. Vice Mayor German is involved in an organization that submitted an application.

11.c Citizen's Police Review Board

Vice Mayor German has received questions regarding the redaction of information from the Citizens Police Review Board and will follow up with Chief Kozal.

11.d Update on Gift Card

Commissioner Emory requested an update on the gift cards. Finance Director, Ken Grant, provided the update. A meeting of the Gift Card Committee will be scheduled to discuss how to move forward.

11.e End of Year Budget Amendment

Mayor Johnson requested and Finance Director Ken Grant provided an overview of the End of Year Budget Amendments. Highlights are included in the packet.

11.f Muskegon Museum of Art RAP Grant Letter of Support Request

Mayor Johnson was asked to provide a letter of support from the City for the Muskegon for the Museum of Art's RAP Grant application. He is seeking commission consensus as to whether or not to provide a letter of support. There are several considerations to be made and as discussion took place it was revealed that there is another entity, Adelaide Pointe, also seeking a letter of support from the City. This is a competitive grant that the city has applied for as well. Commission consensus is that the city should support the grant applications for both entities that have requested as all projects benefit the city and it's residents.

11.g **Parks and Recreation Advisory Committee**

The recently created Parks and Recreation Advisory Committee is accepting applications for positions until July 27, 2023.

12. Public Comment on Non-Agenda items

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

Public comments were received.

13. Closed Session

14. Adjournment

The City Commission meeting adjourned at 8:12 p.m.

Motion by: Commissioner Ramsey

To adjourn at 8:12 p.m.

MOTION PASSES

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Respectfully Submitted,

Ann Marie Meisch, MMC - City Clerk

City of Muskegon

Work Session

Minutes

July 10, 2023, 5:30 pm
Muskegon City Hall
933 Terrace Street, Muskegon, MI 49440

Present:	Mayor Ken Johnson Commissioner Rachel Gorman Commissioner Rebecca St.Clair Commissioner Michael Ramsey Commissioner Teresa Emory
Absent:	Commissioner Eric Hood Vice Mayor Willie German, Jr.
Staff Present:	City Manager Jonathan Seyferth City Clerk Ann Meisch Deputy City Clerk Kimberly Young

1. Call to Order

2023-76

Mayor Johnson called the worksession meeting to order at 5:30 p.m. on Monday, July 10, 2023.

2. New Business

2.a <u>DWRF & CWSRF Contract Summary - DPW</u>

Staff presented the result of several bids recently received as a part of the FY23 DWRF (Drinking Water Revolving Fund) and CWSRF (Clean Water State Revolving Fund) program, including the water and sewer debt fee implications and state aid figures.

In June of 2021, DPW staff and Prein & Newhof presented many projects as part of the Project Plan updates that were submitted to EGLE upon Commission's resolution of support. After determining which of those projects were most viable, Commission then authorized design engineering contracts to prepare plans, bidding documents and other necessary program items in October of 2022. The projects for which plans and other documents were prepared for are:

- The replacement of water main, sewer and roadways in the Bluffton Neighborhood, including Wilcox, Thompson, Edgewater, Cherry, and Walnut Streets.
- The replacement of water main, sewer and roadway in Morton Avenue from Lincoln to Denmark.
- Repairs to the Harbour Towne and Edgewater lift stations (sanitary sewer pump stations).
- The replacement of approximately $4 Million worth of lead service lines in various locations.

Prein & Newhof completed the design work and bids were received on Thursday, June 22, 2023 and Tuesday, June 27, 2023. A summary of the prices received as shown in the table.

Project	Award Price
Wilcox-Thompson	$4,048,154.05
Morton Avenue	$1,732,668.75
Lift Station Repairs	$424,495.00
Lead Service Lines	$4,467,787.86
Total Construction Cost	$10,673,105.66
Grant & Aid Offered (>67%)	$7,189,305.05
Cost to the City (Bonded)	$3,483,800.61

At this time we also have a good idea of the grant and aid offered by the state to the City under the programs. The sewer projects are expected to receive 50% principal forgiveness and the water projects are expected to receive principal forgiveness and grants totaling 75% forgiveness. The remainder of the cost will be bonded for 20 years at a well-below market rate of 1.875%

With the newly implemented water and sewer debt fees, the cost of these projects to our customers can be directly estimated at this time. The table shows the estimated debt fees that each project will require to be charged int he 2025 or 2026 fiscal year once the bond draws have reached their maximum and the fees have been adjusted to cover the payments.

Project	Water	Sewer	Total
Wilcox-Thompson	$0.14	$0.33	$0.47
Morton Avenue	$0.08	$0.09	$0.17
Lift Station Repairs	N/A	$0.07	$0.07
Lead Service Lines	$0.34	N/A	$0.34
Total Monthly Fee	$0.56	$0.49	$1.05

The projects will have other costs that will be included in the bonds and will be eligible for the same principle forgiveness and grants, such as the construction engineering approved this past October. Those costs will be included in the bond sales in the next couple months, and complete projects costs and estimated debt service fees will be shared at that time once confirmed with the state finance office and our consultants. We expect the debt service fees will be about 10% higher than those shown here once all costs are accounted for.

The individual construction contracts are on the agenda for the July 11, 2023 meeting. This information is presented to allow the Commission to get a better view of the total impact these programs will have on our system in 2024 and on our customers over the life of the bond.

AMOUNT REQUESTED: N/A

FUND OR ACCOUNT: Water (590), Sewer (591), & Local Streets (203)

Discussion took place regarding the Drinking Water Revolving Fund & Clean Water State Revolving Fund. Four items related to the contracts will be on the agenda for consideration July 11, 2023.

2.b Muskegon Social Equity Program - Planning

Staff is seeking approval to set this year's allocations for the Muskegon Social Equity Program (MSEP)

The City received $622,000 from marihuana excise tax payments this year and agreed to use 30% ($186,600) towards the MSEP. Staff is proposing to keep 40% ($74,640) allocated towards grants and 30% ($55,980) towards education and outreach.

Staff is proposing to eliminate the funding for expungement clinics this year (expungements are scheduled through the first quarter of 2024) and allocate the remaining 30% ($55,980) towards neighborhood association grants created from the Fair Housing settlement ($10,000) and public infrastructure improvements ($45,980) in the neighborhoods near the marihuana overlay district. These improvements would include things such as alley paving, tree trimming, street sign replacement, sidewalk improvements, etc.

Discussion took place regarding the proposed expenditure of the excise tax payments being used in neighborhoods where there are marihuana businesses.

2.c Update on Short-Term Rentals - City Manager

Staff is providing an update on the issue of Short-term Rentals.

As the growth of short-term rental (STR) companies, such as AirBnB, and VRBO, becomes more prevalent, many communities across the state are discussing policies that would manage the popularity of this lodging opportunity. Local units of government are seeking to establish reasonable rules and regulations that strike the delicate balance of allowing short-term vacation rentals in ways that keep all property owners in mind.

Earlier this year, the city received questions and comments from residents and business owners interested in learning more about short-term rentals and its impact in our community. A STR Community Workshop was held on May 16, 2023. The city has since created an online Short-Term Rentals link for residents to remain engaged on this topic. It includes additional information and issue updates, along with tools for the public to provide important feedback. A more detailed discussion with the commission is expected later this Fall to assess implementing new protocols around this issue.

The Community Engagement Division, Inspections Department (SafeBuilt), Public Safety, and Economic Development all presented information regarding the impact of Short-Term Rentals. Deborah Santiago-Sweet covered the workshops that were held by the City to inform residents as well as receive feedback from residents about the current program. The inspections department (SafeBuilt) provided an overview of the process to register as a Short-Term Rental as well as how violations are addressed. Public safety reviewed the number of noise and parking complaint that have been made since 2019 and how many were at STR properties. Economic Development talked about the impact of Short-Term rentals and how it relates to the recent housing study and the impact on housing availability. An on-line portal is available for data collection and to report non-compliance issues, etc. The non-emergency number to call with concerns is 722-3524 and email address is muskegon@safebuilt.com to report addresses suspected of short or long term rentals that are not registered.

Discussion took place regarding the appetite for a moratorium. This will be addressed again at a later date. There is general support for finding a solution to some short term vs long term or short to long term rental transition, for amendments to ordinances, etc.

3. Public Comment

Public comment was received.

4. Adjournment

The Work Session meeting adjourned at 8:14 p.m.

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Respectfully Submitted,

Ann Marie Meisch, MMC - City Clerk

City of Muskegon

City Commission Meeting

Minutes

July 11, 2023, 5:30 pm
Muskegon City Hall
933 Terrace Street, Muskegon, MI 49440

Present:	Mayor Ken Johnson Commissioner Rachel Gorman Commissioner Rebecca St.Clair Commissioner Eric Hood Vice Mayor Willie German, Jr. Commissioner Michael Ramsey Commissioner Teresa Emory
Staff Present:	City Manager Jonathan Seyferth City Clerk Ann Meisch City Attorney John Schrier Deputy City Clerk Kimberly Young

1. Call To Order

Mayor Johnson called the Muskegon City Commission meeting to order at 5:30 p.m.

2. Prayer

Vice Mayor Willie German, Jr. opened the meeting with a prayer.

3. Pledge of Allegiance

The Pledge of Allegiance to the Flag was recited by the Commission and the public.

4. Roll Call

As recorded above

5. Honors, Awards, and Presentations

5.a <u>Recognition of Clerk</u>

City Clerk, Ann Meisch, was recognized for her assistance to the Wings Over Muskegon Event.

6. Public Comment on Agenda Items

Public comments were received.

7. Consent Agenda

Action No. 2023-77

Motion by: Commissioner Ramsey
Second by: Commissioner Gorman

To accept the consent agenda as presented, minus item 7c, 7d, 7h, 7m, and 7n.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.a Approval of Minutes - City Clerk

To approve the minutes of the June 12, 2023 Worksession and June 13, 2023 Regular meeting.

STAFF RECOMMENDATION: To approve the minutes.

7.b Easement for Electric Facilities at 159 McLaughlin Ave - Planning

Consumers Energy is seeking a thirty (30) foot wide strip of land, being fifteen (15) feet on each side of the centerline to obtain electricity for the construction of a residential structure at 159 McLaughlin Ave. which is a City owned parcel that is being developed.

Consumers Energy has requested an easement for utility pole(s) on each side of the centerline to obtain electricity for the construction of a residential structure at 159 McLaughlin Ave. which is a City owned parcel that is being developed.

STAFF RECOMMENDATION: To grant an easement to Consumers Energy on the City's property for 159 McLaughlin Ave. and authorize the Mayor to sign the easement documents.

7.e Second ARP Amendment for West Urban - Development Services

Staff is seeking approval to add 1 lot at 1077 Sophia to the ARP Agreement for West Urban to construct 3 homes.

In an effort to construct more affordable product and keep our target AMI statistics on track with the buyer pool, we have worked with West Urban to design some housing product that can be built and marketed at lower price points. The lot we are requesting is perfectly shaped to add three smaller units that can be sold for lower costs, making them attainable for low/mod income potential buyers in this interest rate environment.

This item does not change the total number of homes we have contracted for the ARP infill housing program, simply where three of them will be located. At the end of the program, we may have lots left over on the exhibit, in which case we will simply terminate the remaining lots from the agreement to free them up for other infill housing programs in the future.

STAFF RECOMMENDATION: To approve the Second Amendment to the West Urban Infill Housing Residential Construction Agreement as presented and to authorize the Mayor and Clerk to sign.

7.f **<u>123.NET Metro Act Permit Extension - DPW</u>**

123.NET requests approval of an amendment to their existing Metro Act permit to access and use the public right-of-way within the city for telecommunications purposes.

123.Net currently holds a Metro Act permit with the City of Muskegon. That agreement is set to expire on 02/10/2025. 123.Net desires to extend the term of the permit 5 years to 03/27/2028. Several telecommunications companies hold these permits in order to provide services to City residents and businesses. The permit includes restrictions on how and where the lines and other equipment can be installed.

STAFF RECOMMENDATION: To approve the Metro Act Permit Extension requested by 123.NET and authorize the DPW Director to sign.

7.g **<u>Lead Service Line Replacements - DPW</u>**

Authorize the award of the 2024 Lead Service Line Replacement Contract to SWT Excavating, and authorize the clerk to sign the attached resolution.

Our engineering consultant Prein & Newhof solicited bids for lead service line replacements. This project was introduced to the Commission at the October 25, 2022 regular meeting when the engineering work was awarded. It was also included in our DWRF and CWSRF Project Plans in June of 2021. The original locations proposed are Apple Avenue (in advance of MDOT's 2026 reconstruction of that street) and the East Campbell Field area.

The low bidder, SWT Excavating, is currently performing a similar project for the City of Muskegon Heights, also overseen by Prein & Newhof. Their lowest bid of $3,462,145.86 is below the engineer's estimate. Staff recommends award to Kamminga & Roodvoets on the basis of Prein & Newhof's experience with them on their project in Muskegon Heights, and the similarity between the projects.

SWT's bid was well below the engineer's estimate. Prein & Newhof worked with the state to identify additional lead service lines that could be added to the contract if the bids came in favorably. This way we do not let available principal forgiveness go back to the state. So, staff is simultaneously requesting approval of a change order of $1,005,642 to SWT's bid to increase the contract cost to $4,467,787.86 which will allow us to take advantage of the full amount of bonding and principal forgiveness being offered to us through the state and replace 120 more lead service lines in the Oakview neighborhood.

This project is financed through the sale of bonds in partnership with the State of Michigan Clean Water State Revolving Fund. The State program offers grants and principal forgiveness for portions of the project. We anticipate that when bonds are sold later this summer, we will be offered grants and forgiveness worth 75% of the project cost. For this project that is estimated at $3,350,840.90 of aid. The remainder of the project will be financed over 20 years with a 1.875% interest rate.

The portion of the project that will be financed will be added to the water debt fee. Staff estimates that when fully in effect in FY25, the sewer debt fee associated with this project will be $0.34 per month on a standard residential bill.

AMOUNT REQUESTED: $4,467,787.86 (Total) - $1,116,946.96 (Bonded)

FUND OR ACCOUNT: Sewer (590)

STAFF RECOMMENDATION: To approve award of the 2024 Lead Service Line Replacement Contract to SWT Excavating, contingent upon successful financial arrangements with the CWSRF program, and authorize the Clerk to sign the resolution.

7.i **Wilcox-Thompson Street Reconstruction - DPW**

Authorize the award of the Wilcox-Thompson Street Reconstruction Contract to the low bidder, Kamminga & Roodvoets, and authorize the clerk to sign the resolution.

Our engineering consultant Prein & Newhof solicited bids for sewer replacement, water main replacement, lead service line replacement and street reconstruction in the Bluffton neighborhood. This project was introduced to the Commission at the October 25, 2022 regular meeting when the engineering work was awarded. It was also included in our DWRF and CWSRF Project Plans in June of 2021. A map of the project is shown at the right.

The low bidder, Kamminga & Roodvoets, has performed similar projects for the City, including currently working on the Sanford project, and is highly recommended by staff and by Prein & Newhof. Their low bid of $4,048,154.05 is below the engineer's estimate.

This project is financed through the sale of bonds in partnership with the State of Michigan Clean Water and Drinking Water Revolving Funds. The State of Michigan programs offer grants and principal forgiveness for portions of the project. We anticipate that when bonds are sold later this summer, we will be offered grants and forgiveness worth 75% of the water system cost, and 50% of the sewer system cost. For this project that is estimated at a combined $2,497,306.23 of aid. The remainder of the project will be financed with a 1.875% interest rate.

The portion of the project that will be financed will be added to the water and sewer debt fees. Staff estimates that when fully in effect in FY25, the combined debt fees associated with this project will be $0.47 per month on a standard residential bill.

AMOUNT REQUESTED: $4,048,154.05 (Total) - $1,550,847.82 (Bonded)

FUND OR ACCOUNT: 590 (Sewer) & 591 (Water)

STAFF RECOMMENDATION: To approve award of the Wilcox-Thompson Streets Reconstruction Project to Kamminga & Roodvoets, contingent upon successful financial arrangements with the CWSRF and DWRF programs, and authorize the Clerk to sign the resolution.

7.j **Harbour Towne & Edgewater Lift Station Repairs Project - DPW**

Authorize the award of the Harbour Towne and Edgewater Lift Station Repairs Contract to Jackson-Merkey, and authorize the clerk to sign the resolution.

Our engineering consultant Prein & Newhof solicited bids for pump replacements and other repairs to the Harbour Towne and Edgewater Lift Stations. This project was introduced to the Commission at the October 25, 2022 regular meeting when the engineering work was awarded. It was also included in our DWRF and CWSRF Project Plans in June of 2021.

The low bidder, Jackson-Merkey, has performed similar projects for the City, including having built both of these lift stations at the time of their original construction. Their low bid of $424,995 is below the engineer's estimate and $2,505 below the second lowest bid. The City has had mixed results with Jackson-Merkey. The second half of the Terrace Street project was better managed than previous projects, and due to program requirements the City would be responsible to pay for the "extra" $2,505 if we were to award to the second lowest bidder. For these reasons, staff recommends award to Jackson-Merkey.

This project is financed through the sale of bonds in partnership with the State of Michigan Clean Water State Revolving Fund. The State programs offer grants and principal forgiveness for portions of the project. We anticipate that when bonds are sold later this summer, we will be offered grants and forgiveness worth 50% of the sewer system cost. For this project that is estimated at $213,750 of aid. The remainder of the project will be financed with a 1.875% interest rate.

The portion of the project that will be financed will be added to the sewer debt fee. Staff estimates that when fully in effect in FY25, the sewer debt fee associated with this project will be $0.07 per month on a standard residential bill.

AMOUNT REQUESTED: $427,500 (Total) - $213,750 (Bonded)

FUND OR ACCOUNT: Sewer (590)

STAFF RECOMMENDATION: To approve award of the Harbour Towne and Edgewater Lift Station Repairs Project to Jackson-Merkey, contingent upon successful financial arrangements with the CWSRF program, and authorize the Clerk to sign the included resolution.: I move to approve award of the Harbour Towne and Edgewater Lift Station Repairs Project to Jackson-Merkey, contingent upon successful financial arrangements with the CWSRF program, and authorize the Clerk to sign the resolution.

7.k **Contract Award - Keating Industrial to Port City**

Staff is requesting authorization to approve a contact with Asphalt Paving Inc, in the amount of $201,644.45 for the repaving of Keating Avenue from Industrial Boulevard to Port City Boulevard.

Bids were solicited for a construction project to mill and resurface Keating Ave from Industrial to Port City, along with necessary casting adjustments and maintenance of traffic. Asphalt Paving, Inc. provided the low bid.

AMOUNT REQUESTED: $201,664.45

FUND OR ACCOUNT: 202 (Major Streets)

STAFF RECOMMENDATION: To authorize staff to enter into a contact with Asphalt Paving, Inc. in the amount of $201,664.45 for the resurfacing of Keating Avenue from Industrial Boulevard to Port City Boulevard.

7.l **Olthoff Drive Extension Project Change Order - DPW**

Staff is requesting authorization to approve a contact change order with Terra Excavators, LLC, in the amount of $193,404.00.

This project has been delayed significantly from when it was awarded at the April 25, 2023 Commission meeting. Pipe material delays continue to plague the project, however close coordination with the adjacent property owner has prevented these delays from impacting the critical parts of the overall project.

The project, as it was originally designed, required City staff to perform a large portion of the work on the prison site due to security concerns. As a part of that coordination with the adjacent property owner, the City's consulting engineer and the contract worked to find ways to reduce the security concerns and the City's direct responsibilities. By raising the road and allowing the sewer to connect further west in the existing portion Olthoff Drive, the need to enter the prison property for construction and for maintenance was eliminated. This also eliminated an estimated $166,113 in costs the City DPW would have incurred by needing to perform work on the prison site.

In effect this change order represents approximately an increase of $27,291 to the project, however since the contractor will now be performing all of the work, their contract increases by an amount of $193,404 as shown on the attached spreadsheet. While the original cnotract of $1,043,104.60 was budgeted in FY24, this change order was not, and a budget reforecast will be included at the next quarter. The MEDC grant that paid for demolition of the prison and is paying for the utilities in this project has the funds to pay for this change order, so it will be a revenue-neutral reforecast.

AMOUNT REQUESTED: $193,404.00 (Additional) - $1,236,508.60 (Total)

FUND OR ACCOUNT: 445 (Public Improvement)

STAFF RECOMMENDATION: To authorize staff to approve the change order amount of $193,404.00 revising the contract amount for the Olthoff Extension contract amount with Terra Contractors, LLC to $1,236,508.60.

7.o **Lot Sale - 1690 Creston Street - Planning**

Staff is seeking authorization to sell the City owned, 1.7-acre lot at 1690 Creston St to Excalibur Company, which operates an industrial business adjacent to the parcel.

The lot formerly contained the defunct communications tower and two small equipment sheds. The City usually asks for 30% of the true cash value for a lot. The true cash value of the lot is $30,000 (75%=$22,500). Staff received an estimate to remove the tower and sheds at a cost of $23,500. The purchase agreement was written as to convey the property to the buyer as long as the tower and sheds were removed from the property within 60 days. However, the buyer was mistaken when he signed the purchase agreement and removed the tower from the site on June 27. After becoming aware, staff instructed the buyer to not remove the sheds at this time. The property owner intends to construct a building addition once the property is purchased.

STAFF RECOMMENDATION: To approve the lot sale request and authorize the Mayor and Clerk to sign the real estate purchase agreement.

7.p **Updated EGLE Loan Resolutions for Shaw Walker and Harbor 31 - Economic Development**

EGLE has requested that the EGLE loan resolutions for both Shaw Walker and Harbor 31 be updated.

EGLE loan applications and supporting documents have been submitted to EGLE for both the Shaw Walker Project and Harbor 31. Our EGLE representative has requested that we include in both resolutions that the local unit of government commits to repaying the loan.

The resolutions for both Harbor 31 and Shaw Walker have been approved at the City Commissions meeting held on June 27, 2023.

STAFF RECOMMENDATION: To approve the attached updated resolutions for the EGLE Brownfield Loan applications on behalf of the City of Muskegon and the Downtown Development authorizing the Mayor and Clerk to sign.

7.q **Amendment to Sale of 754 Leonard Ave - Manager's Office**

Staff is seeking approval for an amendment to the purchase agreement for the sale of 754 Leonard Avenue.

Due to delays in construction, the closing date for the sale of this home has been shifted multiple times which has caused negative impacts on the mortgage interest rate of the buyer. The amendment changes the amount of proceeds the city will receive from the sale. The sale price remains at $220,000, and now the city is agreeing to contribute $8,000 toward the buyer's closing costs. The original agreement (approved on November 22, 2022) had no seller's concession included. Staff recommends approving the amendment to ensure the buyer can move forward with the purchase. There is certainly risk that the buyer will walk away from the sale if the amendment is not approved.

STAFF RECOMMENDATION: To approve the amendment to the purchase agreement for 754 Leonard Avenue.

7.r **Gaming Resolution for Friends of Art - City Clerk**

Friends of Art is requesting Recognition as non-profit in the City of Muskegon for the purpose of obtaining a charitable gaming license.

STAFF RECOMMENDATION: To approve the request from Friends of Art to be recognized as a non-profit in the City of Muskegon for the purpose of obtaining a charitable gaming license.

7.c **GARE Membership - Manager's Office**

Staff is seeking approval to formally apply for membership with the Government Alliance on Race & Equity.

Staff had participated with Ottawa County where we began work with the GARE framework. Staff is committed to achieving racial equity through improvements to our policies, practices, and procedures. We have re-established the Core Team and expect to complete an audit of our current practices. It is important to us to formally join the GARE community and benefit from the resources they provide.

Our membership comes with expectations that we will share our experiences, insights, challenges, and successes with other GARE members. We are encouraged to share our affiliation with GARE across our networks, media assets, and the public and to follow GARE's social media policy.

Staff propose joining as Core members which means our entire city government is included, and every employee has access to the resources. Based on our number of employees, annual dues are $1,000.

STAFF RECOMMENDATION: To approve formal application to join the Government Alliance on Race & Equity.

Action No. 2023-78(c)

Motion by: Vice Mayor German
Second by: Commissioner St.Clair

To approve formal application to join the Government Alliance on Race & Equity.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.d **<u>Land Bank Lot Purchase - Development Services</u>**

Staff is seeking approval to purchase 10 additional residential lots from the Muskegon County Landbank to add to our existing infill housing programs.

Staff has been working diligently to get more builders and investors involved in infilling housing for the community in light of the staggering data in our 5 Year Housing Needs Assessment. This has been successful and we are seeing an uptick in lot sales both from our inventory as well as the Land Bank's intended for new construction. We are still working out some issues with the lots intended for the PILOT program with West Urban, and found these lots owned by MCLB are proximal to many of our other builds and future build sites. We would like to get them under site control in order to continue that infill program and ensure we have adequate lots to complete the project successfully.

Additionally, there is a higher charge for these lots in particular than we would typically see from the MCLB due to the fact we intend to add them to a PILOT agreement, which will cost them money on the back end.

AMOUNT REQUESTED: $35,000

FUND OR ACCOUNT: Public Improvement Fund, 23/24 Budgeted Property Acquisitions

STAFF RECOMMENDATION: To approve application to Muskegon County Land Bank for purchase of 10 lots as presented for $35,000, and to authorize closing.

Action No. 2023-78(d)

Motion by: Commissioner Emory
Second by: Vice Mayor German

To approve application to Muskegon County Land Bank for purchase of 10 lots as presented for $35,000, and to authorize closing.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.h **Morton Street Reconstruction - DPW**

Authorize the award of the Morton Street Reconstruction Contract to the low bidder, Jackson-Merkey, and authorize the clerk to sign the resolution.

Our engineering consultant Prein & Newhof solicited bids for sewer replacement, water main replacement, lead service line replacement and street reconstruction in Morton Street from Lincoln to Denmark. This project was introduced to the Commission at the October 25, 2022 regular meeting when the engineering work was awarded. It was also included in our DWRF and CWSRF Project Plans in June of 2021.

The low bidder, Jackson-Merkey, has performed similar projects for the City, including the Terrace Street project. Their low bid of $1,732,668.75 is below the engineer's estimate and about $275,000 below the second lowest bid. The City has had mixed results with Jackson-Merkey. The second half of the Terrace Street project was better managed than previous projects, and due to program requirements the City would be responsible to pay for the "extra" $275,000 if we were to award to the second lowest bidder. For these reasons, staff cautiously recommends award to Jackson-Merkey.

This project is financed through the sale of bonds in partnership with the State of Michigan Clean Water and Drinking Water Revolving Funds. The State of Michigan programs offer grants and principal forgiveness for portions of the project. We anticipate that when bonds are sold later this summer, we will be offered grants and forgiveness worth 75% of the water system cost and 50% of the sewer system cost. For this project that is estimated at a combined $1,128,660.42 of aid. The remainder of the project will be financed with a 1.875% interest rate.

The portion of the project that will be financed will be added to the water and sewer debt fees. Staff estimates that when fully in effect in FY25, the combined debt fees associated with this project will be $0.17 per month on a standard residential bill.

AMOUNT REQUESTED: $1,732,668.75 (Total) - $604,008.33 (Bonded)

FUND OR ACCOUNT: Water (591), Sewer (591), & Local Streets (203)

STAFF RECOMMENDATION: To approve award of the Morton Street Reconstruction Project to Jackson-Merkey, contingent upon successful financial arrangements with the CWSRF and DWRF programs, and authorize the Clerk to sign the resolution.

Action No. 2023-78(h)

Motion by: Commissioner Emory
Second by: Commissioner St.Clair

To approve award of the Morton Street Reconstruction Project to Jackson-Merkey, contingent upon successful financial arrangements with the CWSRF and DWRF programs, and authorize the Clerk to sign the resolution.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

7.m <u>Shoreline Drive Pilot Phase II - DPW</u>

Authorize staff to spend up to $56,000 for the implementation of the second phase of the Shoreline Drive Traffic Pilot, including authorizing staff to enter into contracts with Give ‘Em a Brake Safety and Barry’s Greenhouses for $20,890 and $14,000 respectively.

At the work session meeting on June 12, 2023, staff presented options for the implementation of the second phase of the Shoreline Drive Traffic Pilot. This phase is intended to be longer and more representative of the summer and event season than the first phase was last fall.

Commission expressed support for the pilot, as well as for some “imagination stations” that would call to mind what the next version of Shoreline Drive could look like. As discussed at the meeting, those stations will include landscaping along the corridor, and could include a section of parking near the Arena and/or Farmer’s Market, street art at intersections or elsewhere, and additional stations if community partners are interested in participating (such as a temporary or faux bus stop).

The traffic control and data collection will be set up as quickly as possible in order to obtain data in July of 2023 and make more direct comparisons to our baseline data from July of 2022. The imagination items will be deployed as soon as they are available. In summary of the costs:

- Traffic control contract with Give ‘Em a Brake Safety: $20,890.00 (See Attached)
- Landscaping by Barry’s Greenhouses: $14,000 Quote Plus $6,000 Contingency (See Attached)
- Supplies and Labor for Street Artwork: $5,000
- Miscellaneous Imagination Station Supplies & Labor: $10,000

The total as presented here and discussed at the work session is $56,000 based on the two attached quotes and efforts to assemble the imagination stations.

AMOUNT REQUESTED: $56,000

FUND OR ACCOUNT: 202 (Major Streets)

STAFF RECOMMENDATION: To authorize staff to spend up to $56,000 for the implementation of the second phase of the Shoreline Drive Traffic Pilot, including authorizing staff to enter into contracts with Give ‘Em a Brake Safety and Barry’s Greenhouses for $20,890 and $14,000 respectively.

Action No. 2023-78(m)

Motion by: Vice Mayor German
Second by: Commissioner Ramsey

To authorize staff to spend up to $56,000 for the implementation of the second phase of the Shoreline Drive Traffic Pilot, including authorizing staff to enter into contracts with Give 'Em a Brake Safety and Barry's Greenhouses for $20,890 and $14,000 respectively.

Ayes: (6): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Commissioner Ramsey, and Commissioner Emory

Nays: (1): Vice Mayor German

MOTION PASSES (6 to 1)

7.n **Splashpad RFQ/RFP - DPW**

Staff requests authorization to issue a request for qualifications/proposals to replace the downtown splash pad.

During the summer of 2022 the downtown splash pad was subject to frequent breakdowns and disruptions in service. An extensive amount of resources were put towards the project on numerous occasions to provide what little operational use the site was able to provide in 2022. Late in 2022 the system failed again and it was determined in the best interest to close it for the remainder of the year. The Parks irrigation staff have created a temporary fix to provide this amenity to our residents for the summer of 2023 to hopefully get us through the season but this is not a permanent solution.

Staff is requesting approval to issue the attached request for qualifications to begin the next phase of this project which will start to envision a long term replacement for the site. Proposals received through the RFQ process will be reviewed and shortlisted by a team of stakeholders and then presented to the Commission and Public for additional feedback. Construction of a new site for use in 2024 is the expectation.

The Michigan Spark Grant has awarded the City of Muskegon $250,000 with an additional donation of $50,000 from Howmet to help with upgrades to the splash pad and replacement of the "Alcoa Celebration Square" sign.

The previous RFP for this project was developed prior to the receiving the Spark grant. This proposal is being created to fit into the awarded grant amount.

AMOUNT REQUESTED: N/A

AMOUNT BUDGETED: $290,000

STAFF RECOMMENDATION: Authorize staff to issue a request for qualifications for the replacement of the downtown splash pad.

Action No. 2023-78(n)

Motion by: Commissioner Ramsey
Second by: Commissioner St.Clair

Authorize staff to issue a request for qualifications for the replacement of the downtown splash pad.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

8. Public Hearings

8.a Establishment of a Commercial Redevelopment District - 420 S. Harvey Rental and Storage LLC - Economic Development

420 S. Harvey Rental & Storage LLC, has requested the establishment of a Commercial Redevelopment District at 420 S. Harvey. The creation of the district will allow the building owner to apply for a Commercial Facilities Exemption Certificate. The Commercial Facilities Exemption Tax freezes the taxable value of the building and exempts the new investment from local taxes.

Most recently this property was used by Sons of Norway and built in 1948. The sq ft of the property is about 10,754. 420 Harvey Holdings LLC (the company), intends to redevelop this property for retail. The total cost of rehabilitation will be $3,000,000, with 150 new jobs, 50 retained jobs, and 100 construction jobs.

The owner is seeking a Commercial Facilities Exemption Certificate for Phase 1 of development which will include a marijuana retailer, marijuana consumption lounge, restaurant/ bar, and outdoor hospitality venue.

STAFF RECOMMENDATION: To close the public hearing and approve the Establishment of the Commercial Redevelopment District at 420 S. Harvey authorizing the Mayor and City Clerk to sign the resolution.

Action No. 2023-79(a)

Motion by: Commissioner St.Clair
Second by: Commissioner Ramsey

To close the public hearing and approve the Establishment of the Commercial Redevelopment District at 420 S. Harvey authorizing the Mayor and City Clerk to sign the resolution.

PUBLIC HEARING COMMENCED: No public comments received.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

8.b <u>Request for a Commercial Facilities Exemption Certificate - 420 S. Harvey Rental and Storage LLC - Economic Development</u>

420 S. Harvey Rental & Storage LLC, has requested a Commercial Facilities Exemption Certificate 420 S. Harvey.

Contingent to the approval of a Commercial Redevelopment District, 420 S. Harvey Rental & Storage LLC has requested a Commercial Facilities Exemption Certificate for the property at 420 S. Harvey. The owner plans to redevelop this property and bring a new cannabis business Cannary. The total cost of rehabilitation will be $3,000,000, with 150 new jobs, 50 retained jobs, and 100 construction jobs.

The owner is seeking a Commercial Facilities Exemption Certificate for Phase 1 of development which will include a marijuana retailer, marijuana consumption lounge, restaurant/ bar, and outdoor hospitality venue. The Tax Abatement Committee met on July 6, 2023 to score this application and send along their recommendation to City Commission.

STAFF RECOMMENDATION: To close the public hearing and approve the Commercial Facilities Exemption Certificate at 420 S. Harvey authorizing the Mayor and City Clerk to sign the resolution.

Action No. 2023-79(b)

Motion by: Commissioner Ramsey
Second by: Commissioner Emory

To close the public hearing and approve the Commercial Facilities Exemption Certificate, for 8 years, at 420 S. Harvey authorizing the Mayor and City Clerk to sign the resolution.

PUBLIC HEARING COMMENCED: No public comments received.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

9. Unfinished Business

10. New Business

10.a <u>Bike Path Relocation at Adelaide Pointe - Manager's Office</u>

Staff is seeking approval of the exchange of property for the relocation of the Lakeshore Trail bike path within the Adelaide Pointe development.

In cooperation with the development at Adelaide Pointe, staff is requesting a change in the alignment of the Lakeshore Trail. Exhibits showing the existing location of the property/trail overlayed with the proposed location are included for reference. Adelaide Pointe QOZB will deed to the city the necessary property for the trail realignment, and the city will deed to Adelaide Pointe QOZB the former trail property. All closing costs will be borne by the developer. Please note that this property exchange requires the city to enter into the MDNR conversion process, and staff is collaborating with the state on this effort.

STAFF RECOMMENDATION: To approve the exchange of property for the relocation of the Lakeshore Trail within the Adelaide Pointe development and authorize the City Manager to sign.

Action No. 2023-80(a)

Motion by: Commissioner St.Clair
Second by: Commissioner Ramsey

To approve the exchange of property for the relocation of the Lakeshore Trail within the Adelaide Pointe development and authorize the Mayor and City Clerk to sign with the condition that a public easement be place onto the promenade to the Southwest of Building B1 in the Adelaide Pointe approved Planned Unit Development.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

10.b <u>District Library Board Appointment - City Clerk</u>

To make an appointment to the District Library Board for a citizen position with a term expiring June 30, 2027. There are two qualified applicants, Thomas DeVoogd and Karen Evans. Karen Evans held this appointment until the term expired on June 30, 2023.

STAFF RECOMMENDATION: To make an appointment to the citizen position on the District Library Board, term expiring June 30, 2027.

Action No. 2023-80(b)

Motion by: Commissioner Ramsey
Second by: Commissioner Hood

To appoint Karen Evans to the citizen position on the District Library Board, term expiring June 30, 2027.

Ayes: (7): Mayor Johnson, Commissioner Gorman, Commissioner St.Clair, Commissioner Hood, Vice Mayor German, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (7 to 0)

11. Any Other Business

City Manager Jonathan Seyferth advised that we are still looking for a meeting date to review recommendations from the ARPA Community Grant Committee.

Commissioner Hood questioned the policy regarding city residents receiving free beach parking passes.

12. Public Comment on Non-Agenda items

Public comments were received.

13. Closed Session

14. Adjournment

The City Commission meeting adjourned at 8:00 p.m.

Motion by: Commissioner Ramsey
Second by: Commissioner Gorman

To adjourn.

MOTION PASSES

____

Respectfully Submitted,

Ann Marie Meisch, MMC - City Clerk

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: MML Workers' Compensation Fund Board Ballot
Submitted By: Jonathan Seyferth	Department: City Manager

Brief Summary: As a member of the Michigan Municipal League's (MML) Worker's Compensation Fund, the City of Muskegon votes for the fund's board members. The recommended slate of six candidates can be found on the page following the memo.

Detailed Summary & Background: As a member of the Michigan Municipal League's (MML) Worker's Compensation Fund, the City of Muskegon votes for the fund's board members. The Commission must approve a slate of up to six candidates. The recommended slate of candidates can be found on the page following the memo include the following individuals.

First Term Recommendations:

- Christine Burns, Manager, Village of Spring Lake
- Juan Ganum, Manager, City of Bridgeman
- Kevin Klynstra, Mayor, City of Zeeland

Re-election to Second Terms Recommendations:

- Devin Olson, Manager, City of Munising
- Adam Smith, Manager, City of Grand Ledge
- David J Toosava, Mayor, City of Hastings

Goal/Focus Area/Action Item Addressed: N/A

Amount Requested: $0	Budgeted Item: N/A Yes ☐ No ☐
Fund(s) or Account(s): N/A	Budget Amendment Needed: Yes ☐ No ■

Recommended Motion: I move to approve the MML Worker’s Compensation Fund Board of Trustees slate as presented and authorize the City Manager to sign.

Approvals: Immediate Division Head ■ Information Technology ☐ Other Division Heads ☐ Communication ☐ Legal Review ☐	Guest(s) Invited / Presenting: Yes ☐ No ■

michigan municipal league
Workers' Compensation Fund

1675 Green Road
Ann Arbor, MI 48105-2530

T 734.662.3246
800.653.2483
F 734.662.8083
mml.org

To:	Members of the MML Workers' Compensation Fund
From:	Michael J. Forster, Fund Administrator
Date:	June 26, 2023
Subject:	**Fund Trustee Election**

Dear Fund Member:

Enclosed is your ballot for this year's Board of Trustees election. Three appointees have agreed to seek election to their first term, as well as three incumbent Trustees seeking re-election. You may also write in one or more candidates if you wish.

A brief biographical sketch of the candidates is provided for your review.

I hope you will affirm the work of the Nominating Committee by returning your completed ballot in the enclosed return envelope, no later than August 11th. Alternately, you may complete your ballot online:

Go to www.mml.org. At the top of the page, hover over *Programs & Services* and select *Risk Management* from the drop-down list. Next, look for the *Jump To* panel and select *Worker's Compensation Fund*. The ballot link is on the next page, in the *Jump To* panel, under *Online Forms*.

The MML Workers' Compensation Fund is owned and controlled by its members. Your comments and suggestions on how we can serve you better are very much appreciated. Thank you again for your membership in the Fund, and for participating in the election of your governing board.

Sincerely,

Michael J. Forster

Michael J. Forster
Fund Administrator
mforster@mml.org

THE CANDIDATES
Four-year terms beginning October 1, 2023

Christine Burns, Manager, Village of Spring Lake

Chris has more than 25 years of experience as a municipal official. She has been the village manager of Spring Lake since 2012, after serving the City of Cedar Springs for more than five years, the Village of Oxford for nearly two years, and the City of Clare for more than 14 years. Chris graduated from Central Michigan University in 1990 with a BS in Business Administration, majoring in Management, earned her MSA in Public Administration from CMU in 2006 (*Fire Up Chips!*), and holds a Certified Master Municipal Clerk designation. She is a member of Michigan Municipal Executives (MME); the International City/County Management Association (ICMA); and the West Michigan Local Government Management Association (WMLGMA). She has served on the MME Board of Directors and as President of the WMLGMA. Chris is seeking election to her first term.

Juan Ganum, Manager, City of Bridgman

Juan has 25 years of experience in local government. He served as the Community Development Director for the City of Niles from 1998 to 2015 and has since served as City Manager for the City of Bridgman. Juan graduated from Michigan State University in 1995 with a BS in Urban and Regional Planning and earned his Masters in Public Administration from Western Michigan University in 2007. He currently serves as the vice-chair of the Michigan Municipal Executives' Ethics Committee and is actively engaged on boards and committees within Berrien County. Juan is seeking election to his first term.

Kevin Klynstra, Mayor, City of Zeeland

Kevin has more than 28 years of experience in local government. He was elected as mayor of the City of Zeeland in 2011 and was most recently reelected in 2021 for his sixth two-year term. Before becoming mayor, he was a member of the Zeeland City Council for 16 years. Kevin serves on several boards and commissions, including the Michigan Association of Mayors (MAM) board, Zeeland's Planning Commission, the Macatawa Area Coordinating Council (MACC), and the West Michigan Airport Authority (WMAA). Kevin is seeking election to his first term.

THE CANDIDATES
Four-year terms beginning October 1, 2023

Devin Olson, City Manager, City of Munising

Devin has more than five years' experience as a municipal official, having served as Munising's City Manager since 2014. Devin has also served on MML's Transportation and Infrastructure Committee for three years. Devin is seeking election to his first term. Devin is seeking re-election to his second term.

Adam Smith, Manager/Municipal Executive, City of Grand Ledge

Adam has worked in local government since 2004 and currently serves as the City Manager/Municipal Executive of Grand Ledge. He is chair of the MML's Municipal Services Committee, formerly served six years as City Manager Representative on the Elected Officials Academy Board of Directors, and received the League's Special Award of Merit in 2013. Adam is an active member of Michigan Municipal Executives, having served on its Board of Directors from 2013-2016, and currently serving as its Advocacy Chairperson. He has given workshops on effective Council-Manager relationships. Adam has a Bachelor's Degree in Public Administration and a Master's in Administrative Leadership, both from Central Michigan University; a Certificate in Strategic Foresight from the University of Houston; and is a graduate of the Disney Institute for Leadership Excellence. Adam is seeking re-election to his third term.

David J. Tossava, Mayor, City of Hastings

David has over twelve years' municipal experience and has served as mayor of Hastings for two years. He also serves on the Board of Directors of the Michigan Association of Mayors. David is seeking re-election to his second term.

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 11, 2023	Title: Tax Foreclosure City Property Acquisition 2023
Submitted By: Jake Eckholm	Department: Development Services

Brief Summary: Staff is seeking approval to purchase various vacant lots for infill housing and homes for rehab prior to their procession to the Tax Foreclosure Auction.

Detailed Summary & Background: We have received the list of properties and structures in the city limits that are proceeding to the tax auction. Staff has compiled the attached list that we feel are in the public interest for the City of Muskegon to acquire for the purposes of new construction infill housing, as well as affordable housing rehabs through CNS. We anticipate that most of these properties will be built on in calendar 2024 and will be a blend of for-sale and for-rent product.

The lots are requested for purchase as follows:

- 1974 Dowd ($1,216.50)
- 647 Marquette ($520.79)
- 77 Hartford ($726.68)
- 1278 Pine ($508.27)
- 611 Leonard ($655.03)
- 1124 Langeland ($981.66)

Total for Lots: $4,608.93

The house requested for CNS Rehab is 1295 James **($5,610.34)**

Goal/Focus Area/Action Item Addressed: Housing for all, Complete Active Economic Development Projects

Amount Requested: $10,219.27	Budgeted Item: Yes ■ No ☐
Fund(s) or Account(s): 473-734-801 for HOME 445 (Public Improvement Fund) for lot purchases	Budget Amendment Needed: Yes ☐ No ■

Recommended Motion: To approve the purchase of the properties on the 2023 Tax Auction List as presented, and to authorize the city manager or his designee to close on the properties.

Approvals:	Guest(s) Invited / Presenting:

Immediate Division Head ■ Information Technology ☐ Other Division Heads ☐ Communication ☐ Legal Review ■	Yes ☐ No ■

NOTICE TO MUSKEGON COUNTY TREASURER, TONY MOULATSIOTIS, THE FORECLOSING GOVERNMENTAL UNIT, OF ELECTION TO PURCHASE FORECLOSED PROPERTY

The City of Muskegon ________________ hereby notifies Tony Moulatsiotis, Muskegon County Treasurer and Muskegon County Foreclosing Governmental Unit, that it intends to purchase real property located in the City described as:

Parcel # ____________________________________
Property Address: _____________________________
Legal Description: ______________________________________

____

____

____

(You may attach printout from assessment roll in lieu of typing in legal description here)

Please check the appropriate box and fill in the corresponding information.

☐ One or more claimants have filed a notice of intent to claim remaining proceeds under MCL 211.78t.

- The minimum bid for the property is $_____________.
- The fair market value of the property is $ _________________.
- The purchase price is $ _____________, which is the greater of the minimum bid or the fair market value of the property.

☐ No claimants have filed a notice of intent to claim remaining proceeds under MCL 211.78t.

- The purchase price is $ ____________, which reflects the minimum bid for the property.

The City agrees to pay a fee in the amount of $30.00 to cover the cost of recording the deed transferring the property.

The City agrees to notify the Foreclosing Governmental Unit (Muskegon County Treasurer) at least seven days before the event if it ever sells or transfers to a third party all or any part of the property.

Upon the request of the Foreclosing Governmental Unit, the City shall provide without cost to the Foreclosing Governmental unit information regarding any subsequent sale or transfer of the property. The information shall be provided within seven days of receipt of the request.

The election by the City is made subject to any prior right of election vested in the State of

Michigan.

The City understands that neither Muskegon County or Tony Moulatsiotis, either individually and/or as Muskegon County Treasurer and/or as the Foreclosing Governmental Unit, makes any warranty of any kind as to the title transferred to the City and will not indemnify, defend, save nor hold harmless the City from any or all claims, liabilities, damages, losses, suits, fines, penalties, demands or expenses, including costs of suit and attorney fees, incurred by the City because of or related to its election to purchase the property, including any claims arising from or related to claims for remaining or surplus proceeds.

The City agrees to indemnify, defend, save and hold harmless Muskegon County and Tony Moulatsiotis, individually and/or as Muskegon County Treasurer and/or as Foreclosing Governmental Unit, from any and all claims, liabilities, damages, losses, suits, fines, penalties, demands and expenses, including costs of suit and attorney fees, which Muskegon County and/or Tony Moulatsiotis, individually and/or as Muskegon County Treasurer and/or as Foreclosing Governmental Unit incurred because of or related to the election of the City to purchase the property, including any claims arising from or related to claims for remaining or surplus proceeds.

City of Muskegon
Name of Local Unit

Date: ________________

Ken Johnson
Mayor or Supervisor Name

____
Mayor or Supervisor Signature

Date: ________________

Ann Marie Meisch
Clerk Name

____
Clerk Signature

86083:00081:7115594-1

NOTICE TO MUSKEGON COUNTY TREASURER, TONY MOULATSIOTIS, THE FORECLOSING GOVERNMENTAL UNIT, OF ELECTION TO PURCHASE FORECLOSED PROPERTY

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Parcel # ____
Property Address: ________________________________
Legal Description: ____
____
____
____
(You may attach printout from assessment roll in lieu of typing in legal description here)

Please check the appropriate box and fill in the corresponding information.

☐ One or more claimants have filed a notice of intent to claim remaining proceeds under MCL 211.78t.

- The minimum bid for the property is $_____________.
- The fair market value of the property is $ _________________.
- The purchase price is $ _____________, which is the greater of the minimum bid or the fair market value of the property.

☐ No claimants have filed a notice of intent to claim remaining proceeds under MCL 211.78t.

- The purchase price is $ ____________, which reflects the minimum bid for the property.

The City agrees to pay a fee in the amount of $30.00 to cover the cost of recording the deed transferring the property.

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Michigan.

The City understands that neither Muskegon County or Tony Moulatsiotis, either individually and/or as Muskegon County Treasurer and/or as the Foreclosing Governmental Unit, makes any warranty of any kind as to the title transferred to the City and will not indemnify, defend, save nor hold harmless the City from any or all claims, liabilities, damages, losses, suits, fines, penalties, demands or expenses, including costs of suit and attorney fees, incurred by the City because of or related to its election to purchase the property, including any claims arising from or related to claims for remaining or surplus proceeds.

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City of Muskegon
Name of Local Unit

Date: ________________

Ken Johnson
Mayor or Supervisor Name

____
Mayor or Supervisor Signature

Date: ________________

Ann Marie Meisch
Clerk Name

____
Clerk Signature

86083:00081:7115594-1

NOTICE TO MUSKEGON COUNTY TREASURER, TONY MOULATSIOTIS, THE FORECLOSING GOVERNMENTAL UNIT, OF ELECTION TO PURCHASE FORECLOSED PROPERTY

The City of Muskegon ______________ hereby notifies Tony Moulatsiotis, Muskegon County Treasurer and Muskegon County Foreclosing Governmental Unit, that it intends to purchase real property located in the City described as:

Parcel # ________________________________
Property Address: ________________________
Legal Description: ______________________________
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(You may attach printout from assessment roll in lieu of typing in legal description here)

Please check the appropriate box and fill in the corresponding information.

☐ One or more claimants have filed a notice of intent to claim remaining proceeds under MCL 211.78t.

- The minimum bid for the property is $____________.
- The fair market value of the property is $ ________________.
- The purchase price is $ ____________, which is the greater of the minimum bid or the fair market value of the property.

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The City agrees to pay a fee in the amount of $30.00 to cover the cost of recording the deed transferring the property.

The City agrees to notify the Foreclosing Governmental Unit (Muskegon County Treasurer) at least seven days before the event if it ever sells or transfers to a third party all or any part of the property.

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Ann Marie Meisch
Clerk Name

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86083:00081:7115594-1

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Deputy City Manager Contract
Submitted By: Jonathan Seyferth	Department: City Manager's Office

Brief Summary: The City Commission had indicated a desire to see the Deputy Manager's position memorialized with its own contract. This contract is based largely on the City Manager's contract and notes that the DCM position is outside the Civil Service.

Detailed Summary & Background: The contract is based largely on the City Manager's contract and includes benefits provided to other department/division heads.

Key Highlights:

- Car allowance
- Educational allowance (with a passing grade)
- Remote work option (structured and reviewed annually)
- Contract would be retroactive to May 1, 2023

Goal/Focus Area/Action Item Addressed:

Amount Requested: $144,000	Budgeted Item: Yes ■ No ☐
Fund(s) or Account(s):101-172-5100/various	Budget Amendment Needed: Yes ☐ No ■

Recommended Motion: To approve the Deputy City Manager's contract as presented and authorize the Mayor and Clerk to sign.

Approvals:	Guest(s) Invited / Presenting:
Immediate Division Head ■	Yes ☐
Information Technology ☐	No ■
Other Division Heads ☐	
Communication ☐	
Legal Review ■	

EMPLOYMENT AGREEMENT

CITY OF MUSKEGON – LEIGHANN MIKESELL
Effective May 1, 2023

This employment agreement is made and entered into by and between the CITY OF MUSKEGON ("CITY") and LEIGHANN MIKESELL ("MIKESELL").

Recitals

A. The CITY desires to employ MIKESELL as the Deputy 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 Deputy City Manager

B. MIKESELL desires to be employed as Deputy City Manager of the City of Muskegon in accordance with the terms and provisions of the Agreement.

C. This Agreement supersedes all discussions and agreements.

D. All parties acknowledge that the Deputy City Manager position is outside of the City of Muskegon's Civil Service structure

Agreement

NOW THEREFORE, THE CITY AND DEPUTY CITY MANAGER AGREE AS FOLLOWS:

1. EMPLOYMENT. CITY employs MIKESELL as Deputy City Manager/Chief Operating Officer (DCM/COO) to perform the functions and duties specified in the Deputy City Manager job description, City Charter, and ordinances and to perform such other legally permissible and proper duties and functions as the City Manager may, from time to time, assign, and MIKESELL accepts such employment.

MIKESELL agrees to remain in the employment of the CITY until termination is effected as hereinafter provided. MIKESELL agrees to devote full time to her duties as Deputy City Manager and may undertake other incidental employment, subject to the right of the City Manager to require the Deputy Manager to terminate other incidental employment if it interferes or conflicts with MIKESELL'S duties as Deputy Manager.

2. SALARY. Effective May 1, 2023, CITY agrees to pay MIKESELL, as compensation for services rendered, an annual salary of $**144,000**. MIKESELL shall be entitled to cost of living adjustments approved by the City Commission for division heads on the first of each year, commencing January 1, 2024. Merit adjustments will be considered from time to time and, if granted by the City Manager, would be effective July 1 of each year, commencing July 1, 2024.

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

3.1 **Residency Premium:** City will pay to MIKESELL a premium for being a resident consistent with the Muskegon City Residency Program as amended. Presently, the incentive is 6% of base wages, paid bi-weekly, while MIKESELL resides in the City of Muskegon city limits. MIKESELL will also be afforded to participate in a match toward a down payment and a forgivable loan program for primary residence purchased within the City of Muskegon, subject to certain limitations.

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

3.3 **Disability Insurance**: City provides short-term and long-term (60% of pre-disability earnings up to $5,000 per month) 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 3% 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 9% of W-2 wages.

3.8 **Holidays**: City offers the standard 12 recognized holidays.

3.9 **Vacation Time**: MIKESELL'S existing vacation balance will be maintained as of the effective date of this agreement and credit 200 hours to MIKESELL's vacation bank on the first day of each calendar year, commencing January 1, 2024. 160 hours can be carried over from one calendar year to the next.

3.10 **Personal Leave**: City grants 16 hours of personal leave 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 (96 hours per year). Sick leave may be accumulated to a maximum of 1056 hours. Once an employee has accumulated 160 hours, an employee may be paid (50%) or deposit into a deferred compensation plan (100%). There are certain restrictions on the payout.

3.12 **Bereavement Leave:** In the event of death in the immediate family of an employee, consisting only of spouse, parent, grandparent, child, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandchild, and grandparent-in-law and the employee attends the funeral service, such employee shall be granted up to 30 hours leave of absence with full pay. In the event of death in the step family of an employee, consisting only of step-parent, step-grandparent, step-child, step-brother, step-sister, step mother-in-law, step father-in-law, step son-in-law, step daughter-in-law, step brother-in-law, step sister-in-law, step-grandchild, and step-grandparent-in-law, and the employee attends the funeral service, shall be granted up to 20 hours leave with pay. In the event of death in the family of such employee other than above, 10 hours leave is granted with pay, and shall be taken on the day of the funeral and provided the employee attends the funeral.

3.13 **Jury Duty:** If an employee is summoned to report for jury duty, the employee will be paid the difference between normal wages earned on affected days and jury fees allotted by the courts.

3.14 **Membership Dues**: City will pay membership dues to Michigan Municipal Local Government Management Association (now known as MME), ICMA membership, one civic organization, and other professional organizations as approved by the City Manager. City will reimburse expenses to attend the two Michigan Municipal League or Michigan Association of Planning conferences, the ICMA annual conference, and ICMA conferences in the state.

3.6 **Use of City Vehicle.** Deputy Manager shall receive a vehicle allowance of $300 per month and may use a City vehicle, when available, for any travel related to City business outside of Muskegon County.

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, MIKESELL shall have the same fringe benefits as are available to the highest compensated division head employed by the CITY from time to time.

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

5. SEVERANCE PAY UPON TERMINATION BY CITY.

5.1 **Termination without "cause".** In the event that the City Manager, on behalf of the CITY, gives notice of termination without cause, a minimum of thirty (30) days' notice must be given. MIKESELL shall continue to be employed by the CITY for that period and shall receive her salary during those thirty (30) days from the date of the notice of termination; plus, she shall receive upon departure compensation for 100% of unused vacation and 100% of unused sick time.

5.2 **Termination for cause.** If termination is for "cause", MIKESELL is not entitled to pay beyond days worked or for unused sick leave or vacation time.

"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 materially damages 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; 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; or v) failure to significantly improve performance after a 120 day written notice of specific and significant performance deficiency(ies).

6. TERMINATION OF EMPLOYMENT BY DEPUTY MANAGER. MIKESELL may terminate employment at any time after providing the CITY with a thirty (30) day notice. In the event that the CITY requests MIKESELL's services end prior to the end of her thirty (30) day notice, the CITY shall pay MIKESELL for the balance of the termination period.

7. SEVERANCE PAY UPON TERMINATION BY DEPUTY MANAGER.

In the event the DEPUTY MANAGER terminates her employment she shall receive fifty percent (50%) of her unused sick leave bank and one hundred percent (100%) of her unused vacation pay, but no other severance pay or benefit, except as required by law.

8. EDUCATION ASSISTANCE. The CITY will provide reimbursement for 100% of costs for tuition, fees, and books for the DEPUTY MANAGER'S pursuit of a Master's Degree in Public Administration or related field. Reimbursement will be made for all courses for which the DEPUTY MANAGER receives a passing grade as defined by the criteria of the program or receives confirmation of satisfactory completion (Pass) for up to 4 courses in a calendar year. All books will remain the property of the CITY. The CITY will provide up to 8 hours of paid administrative leave time per pay period for the purpose of attending courses and completing coursework. The administrative leave will not be counted against any earned leave banks. The City Manager and DEPUTY MANAGER will review projected costs prior to the start of each semester.

9. REMOTE WORK ALLOWANCE. The DEPUTY MANAGER may work remotely, including outside the State of Michigan, per the following schedule.

Up to 2 weeks in calendar year 2024

Up to 3 weeks in calendar year 2025 & 2026

Up to 4 weeks in calendar year 2027

Up to 5 weeks in calendar year 2028

Up to 6 weeks in calendar year 2029 and remaining years of employment with the CITY

Remote work may not be taken without the approval of the City Manager. Each year prior to start of any extended period of remote work (2 or more weeks) the City Manager and Deputy City Manager will set in place performance expectations for the remote work period. The City Manager and Deputy City Manager shall evaluate the remote work's impact on City operations at the completion of the remote work period to determine if any adjustments need to be made to the remote work plan going forward. This may include adjustments in the weeks allowed in the matrix above.

10. MERGER OF NEGOTIATIONS. This agreement constitutes the entire contract of employment between CITY and DEPUTY 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.

The remainder of this page is left intentionally blank.

IN WITNESS WHEREOF, the CITY and DEPUTY MANAGER have executed this agreement this ______ day of _____________, 2022.

CITY OF MUSKEGON

By________________________________
Ken Johnson, Its Mayor

and________________________________
Ann Marie Meisch, Its Clerk

DEPUTY MANAGER

____
LEIGHANN MIKESELL

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: AT&T Lease Agreement Renewal
Submitted By: Dave Baker	Department: DPW

Brief Summary:

Staff requests authorization to renew our cellular lease agreement with AT&T.

Detailed Summary & Background:

AT&T has been working with City staff for the past year to renegotiate the now expired AT&T cellular lease agreement for the Marshall & Nims Street water towers. AT&T & staff have tentatively agreed on a new multi-year contract with a 5-year rent guarantee with a net present value of $488,278.26. Staff has determined that this contract is in line with other local contracts AT&T has with other municipalities. This contract will lower AT&T's monthly payments based on market rates, but extends the term to 5 years for consistent cash flow to the City and reduced burden on staff to regularly renegotiate.

Goal/Focus Area/Action Item Addressed:

Sustainability in financial practices and infrastructure. (Key Focus Area of Goal 4)

Amount Requested: N/A	Budgeted Item: Yes ☒ No ☐
Fund(s) or Account(s): 591-000	Budgeted Amendment Needed: Yes ☐ No ☒

Recommended Motion:

I move to authorize staff to enter into a structured lease agreement between the City and New Cingular Wireless PCS, LLC, dba AT&T Mobility Corporation, and authorize the Mayor and Clerk to sign.

Approvals:	Legal Review ☒	Guest(s) Invited / Presenting
Immediate Division Head ☒	Information Technology ☐	Yes ☐
Other Division Heads ☐	Communication ☐	No ☒

Market: MI / IN
Cell Site Number: GRANMI5602
Cell Site Name: Muskegon Marshall WT
Fixed Asset Number: 10124756

STRUCTURE LEASE AGREEMENT

THIS STRUCTURE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Execution Date**") and effective October 1, 2018 (the "**Effective Date**"), is entered into by City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1,** improved with a water tower (the "**Water Tower**"), together with all rights and privileges arising in connection therewith, located at 275 Marshall Street, in the County of Muskegon, State of Michigan (collectively, the "**Property**"). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

Landlord and Tenant (or their predecessors-in-interest) entered into that certain Site Lease dated October 1, 1998, as amended by that certain First Amendment to the Site Lease dated January 29, 2009, as amended by that certain Second Amendment to the Site Lease dated August 17, 2012, as amended by that certain Third Amendment to the Site Lease dated September 23, 2014, and as further amended by that certain Fourth Amendment to the Site Lease dated November 10, 2014 (collectively, the "**Prior Lease**"), for the Premises defined below and the term of the Prior Lease expired on September 30, 2018. Landlord and Tenant agree that this Agreement shall be effective as of the Effective Date and as of the Effective Date, the Prior Lease shall be terminated and of no further force and effect, and this Agreement replaces and supersedes the Prior Lease.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) approximately 100 square feet including the air space above such ground space, as described on attached **Exhibit 1,** for the placement of Tenant's Communication Facility;
(b) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (a) and (b) is the "**Equipment Space**");
(c) that certain space on the Water Tower, as generally depicted on **Exhibit 1,** including the air space above same, where Tenant shall have the right to install its antennas and other equipment (collectively, the "**Antenna Space**"); and
(d) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the "**Connection Space**"). Landlord agrees that Tenant shall have the right to install connections between Tenant's equipment in the Equipment Space and Antenna Space; and between Tenant's equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements and will require written approval before installing a flammable fuel source such as natural gas or propane, which consent may be withheld in Landlord's sole discretion. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way

to the Premises. All new installations of equipment and services by Tenant at the Premises shall require prior notice and approval by Landlord and Landlord's inspections department, such approvals not to be unreasonably withheld, conditioned or delayed. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the **"Premises."**

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "**Communication Facility**" or "**Communication Facilities**"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, (collectively, the "**Permitted Use**") . Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. Tenant at no time can interfere/block access with the day to day operations of the Water Tower main functions and with the current tenants. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment, which shall not interfere with Landlord's or other tenants of the Water Tower or Property, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense. The addition of a generator may be added upon Landlord's written consent Tenant has the right, to install, modify, supplement, replace, upgrade, expand the Communication Facility upon prior written notice and a passing structural analysis (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations. A pre inspection report including a ~~top~~ tip over analysis is required along with a post-inspection report to verify ~~ono~~ no damage has occurred to Landlord's facilities. All inspections must be completed by an engineering company such as Dixon Engineering. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**

(a) The initial lease term will be ten (10) years (the "**Initial Term**"), commencing on October 1, 2018. The Initial Term will terminate on the tenth (10th) anniversary of the Initial Term.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "**Term**."

4. RENT.

(a) Commencing on October 1, 2022 (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Four Thousand Five Hundred Ninety and No/100 Dollars ($4,590.00) (the "**Rent**"), at the address set forth above. The Rent shall continue during the Term, subject to adjustment as provided herein: on each anniversary of the Rent Commencement Date, including throughout any Extension Term exercised, the Rent will increase by two percent (2%) over the Rent paid during the previous year, and every year thereafter. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within ninety (90) days after the Rent Commencement Date.

(b) Modification of Tenant's Obligation to Pay – Rent Guarantee. Notwithstanding Tenant's obligations to pay Rent set forth under the Agreement, for a sixty (60) month period commencing October 1, 2022, and ending September 30, 2027, ("**Rent Guarantee Period**"), Tenant's obligation to pay Rent is guaranteed and such obligation will not be subject to offset or cancellation by Tenant. Notwithstanding the foregoing, if Landlord exercises any of Landlord's rights to terminate the Agreement, if any, other than the Landlord's right to terminate the Agreement due to the default of Tenant under the terms of the Agreement beyond any applicable grace period, Tenant will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, Tenant shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if the following shall occur: (a) Landlord is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (b) there is a foreclosure of the Agreement which results in a termination of the Agreement; or (c) the Landlord shall require Tenant to relocate Tenant's equipment and facilities to a location that is not acceptable to Tenant in its reasonable business judgment if allowed for in the Agreement.. If the Agreement is further modified in the future with an obligation for Tenant to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist

Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant, at Tenant's sole cost and expense, has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. <u>TERMINATION.</u> This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant;

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 8 Interference, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty; or,

(f) by Landlord upon any of the following events: (i) upon two (2) years prior written notice if Landlord determines that after the Initial Term of this Agreement, or upon two (2) years prior written notice before to the conclusion of any renewals of this Agreement, that the Tenant's Permitted Use of the Premises under this Agreement is no longer in the Landlord's best interest, in its sole discretion; (ii) if Landlord determines that Tenant's Permitted Use of the Premises under this Agreement (including Tenant's operation of its communications equipment) is interfering with the rights of Landlord or other tenants currently on the Property and that the issue cannot be remediated by Tenant; or (iii) if Tenant is in default of the terms of this Agreement and the default has not been cured under Section 15.

7. <u>INSURANCE.</u> During the Term, Tenant, at Tenant's sole cost and expense, will carry and maintain in effect a commercial general liability insurance per ISO form CG 00 01 or its equivalent, insuring against bodily injury and property damage. Said policy of commercial general liability insurance will provide a combined single limit of One Million and No/100 Dollars ($1,000,000.00) per occurrence and in aggregate. Tenant shall provide Landlord with a certificate of insurance evidencing such coverage which states that the carrier has insured Tenant for the required insurance policies liabilities under this Lease. Tenant will provide at least 30 days written notice to Landlord, of cancellation or non-renewal of any required coverage that is not replaced.. Landlord shall be included to the policy as an additional insured by endorsement as respects to this Agreement.

8. **INTERFERENCE**.

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) on the Property as of the Effective Date; provided, however, it shall be Tenant's sole responsibility to determine the actual radio frequencies used by such user(s). Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Tenant will not, nor will Tenant permit its employees, tenants, licensee, invitees, agents, or independent contractors to interfere in any way with the operations of Landlord or other tenants of the Water Tower or Premises, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Tenant's installation, operation, and maintenance of its Communication Facilities shall not damage or interfere with Landlord's Water Tower and/or the Property's operations or related repair and maintenance activities. Landlord, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Property in connection with city operations as may be necessary, including leasing parts of the Water Tower and/or Property and surrounding ground space to others.

(f) Tenant acknowledges and agrees that the primary purpose of the Water Tower is to provide water storage for Landlord and its customers. Tenant understands that Landlord may have to interrupt Tenant's use of the Premises from time to time to service, maintain, or repair the Water Tower. Accordingly, Landlord reserves the right at all times during this Agreement to take any action it deems necessary in its sole discretion to repair, maintain, alter, or improve the Property and shall not be liable to Tenant for any temporary interference with Tenant's use as a result of actions necessary to carry out any such activities. Notwithstanding the foregoing, Landlord agrees to provide Tenant with reasonable advance notice of any planned activities, emergencies excepted, and to carry out such activities in a manner to minimize interruptions with Tenant's use.

9. **Intentionally deleted.**

10. **WARRANTIES.**

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) To the extent permitted by state or municipal law, and except as otherwise previously disclosed by Landlord to Tenant prior to the date of this Agreement, Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Water Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord ; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

(c) Tenant currently leases a portion of the Property pursuant to the Prior Lease, and Tenant acknowledges and agrees that Tenant is familiar with the condition of the Premises and agrees to accept the physical condition of the Premises in "AS IS" condition. Tenant further acknowledges and agrees that Tenant is relying solely on its own investigation of the Premises and not on any information provided to or to be provided by Landlord. Tenant agrees to accept the Premises and waive all objections or claims against Landlord arising from or related to the Premises, except for a breach of any representations, warranties, or covenants set forth in this Lease.

11. <u>ENVIRONMENTAL.</u>

(a) Notwithstanding the foregoing, Landlord represents that it has no knowledge of the presence of or contamination by any hazardous substances on the Property in violation of any applicable federal, state, or local law or regulation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

12. <u>ACCESS.</u> At all times throughout the Term of this Agreement, Tenant and its employees, agents, and subcontractors, will require twenty-four (24) hour access, for pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. There is a sign at the access point that will need to be called to, to provide access to enter the Premises in the case of emergencies. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("**UAS**") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement.

13. <u>REMOVAL/RESTORATION.</u> All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Water Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(c) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant sub-meters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the reasonable costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. This Agreement may not be assigned or subleased without the prior written consent of Landlord, which consent may be withheld for any reason or no reason in Landlord's sole discretion. Notwithstanding the foregoing, this Agreement may be assigned without Landlord consent to an entity that controls, is controlled by, or is under the common control of Tenant, or to any entity resulting from any merger or consolidation with Tenant, or to any partner of Tenant, or to any person or entity that acquires all of the assets of Tenant as a going concern, provided that Tenant shall indemnify and hold Landlord harmless. Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that any permitted assignee or subtenant shall be required to comply with all applicable laws including all licensing and/or permitting requirements imposed by all governmental entities having jurisdiction over the Premises.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: Cell Site #: GRANMI5602; Cell Site Name: Muskegon Marshall WT (**MI**)
Fixed Asset #: 10124756
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: GRANMI5602; Cell Site Name: Muskegon Marshall WT (**MI**)
Fixed Asset #: 10124756
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord:

City of Muskegon
933 Terrace Street
Muskegon, MI 49443
Attn: Dave Baker

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (x) all property taxes, real or personal, directly attributable to its occupancy and use of the Property, (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant, which consent shall not be unreasonably withheld.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

i. Old deed to Property
ii. New deed to Property
iii. Bill of Sale or Transfer
iv. Copy of current Tax Bill
v. New IRS Form W-9
vi. Completed and Signed Tenant Payment Direction Form
vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RIGHT OF FIRST REFUSAL. Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability**. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law**. Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival**. Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address. A copy of the IRS Form 1-9 in its current form is attached hereto as **Exhibit 24(k)**.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL**. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

(o) Estoppel. Landlord acknowledges that there are not any owed or outstanding rental payments or fees due on the part of Tenant.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

"**LANDLORD**"

City of Muskegon
a Michigan municipal corporation

By: ______________________________
Print Name: ______________________
Its: ______________________________
Date: ____________________________

"**TENANT**"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ______________________________
Print Name: ______________________
Its: ______________________________
Date: ____________________________

[ACKNOWLEDGMENTS APPEAR ON NEXT TWO PAGES]

TENANT ACKNOWLEDGMENT

STATE OF ________________)
)   SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ___________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ____________________________ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ____________________

LANDLORD ACKNOWLEDGMENT

STATE OF ________________________)
)
COUNTY OF _______________________)

I CERTIFY that on _____________ _____, 202__, ______________________________ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the ___________________ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

____
Notary Public: ____________________________
My Commission Expires:_____________________

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page ___ of ___

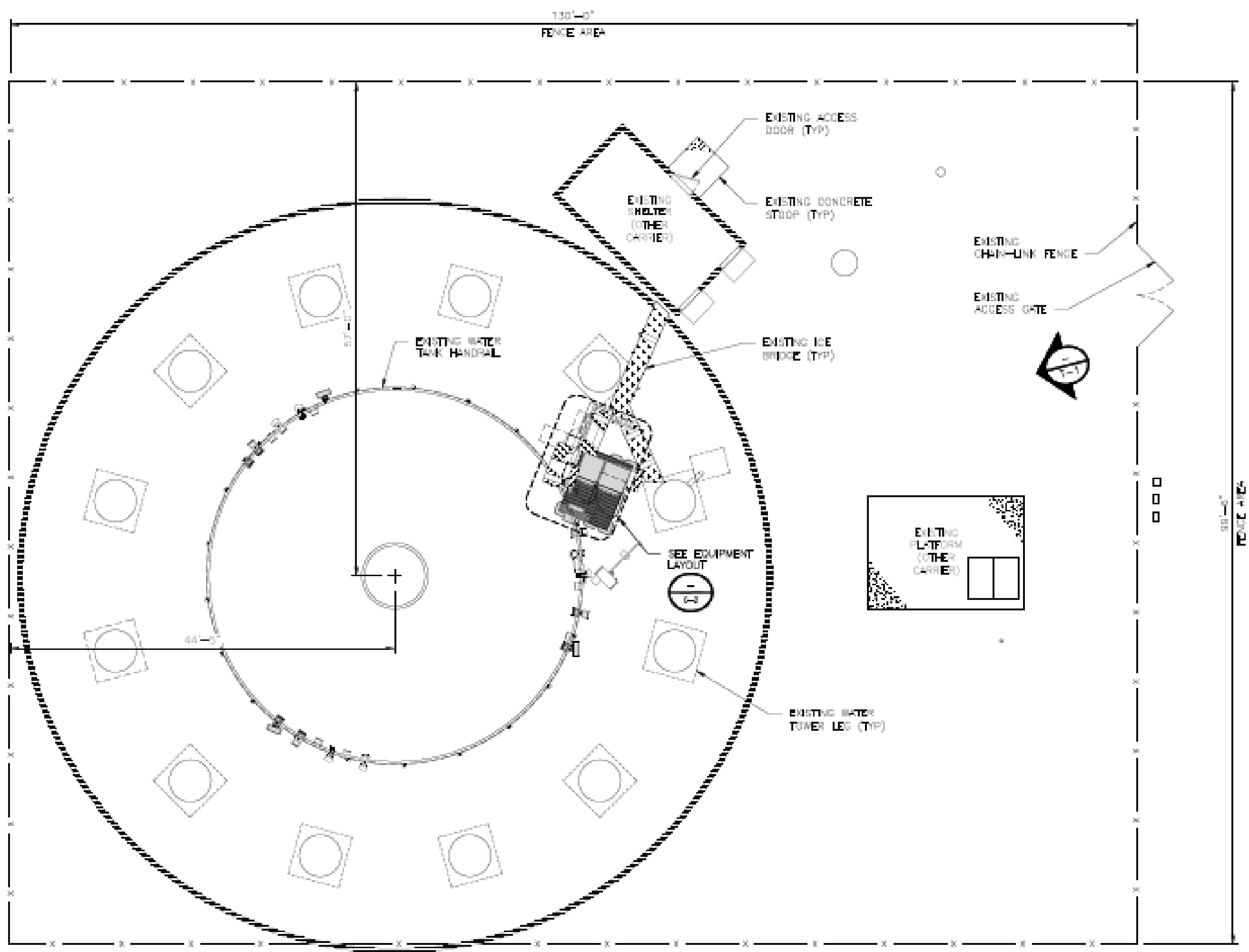
to the Structure Lease Agreement dated ______________, 202__, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Marshall Tank –

East 198 feet of west 660 feet of south 100 feet of Block 5.

The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 10(b)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

[FOLLOWS ON NEXT PAGE]

Recording Requested By
<u>& When Recorded Return To:</u>

Prepared by, and
after recording return to:
MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013
APN: _______________

(Space Above This Line For Recorder's Use Only)

Cell Site No.: **GRANMI5602**
Cell Site Name: **Muskegon Marshall WT (MI)**
Fixed Asset No.: **10124756**
State: **Michigan**
County: **Muskegon**

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), dated as of the last of the signature dates below (the "**Effective Date**"), is entered into by and among City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 ("**Lender**"), _______________, a _______________, having a mailing address of _______________ ("**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**")..

RECITALS:

A. Tenant has entered into a certain Structure Lease Agreement dated _______________, 202__, (the "**Lease**") with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the "**Premises**"); and

B. Lender has made a loan to Landlord in the original principal sum of _____________________________ Dollars ($________), which loan has been secured by a certain _______________dated _______________, and recorded on ________________, as Document Number ______________ in the Official Records of the County Recorder of ______________ County, California (the "**Deed of Trust**"), upon that certain real property located at ______________, in the City of _______, County of __________, State of California __________ [APN: _____________] ("**Property**"), a part of which Property contains the Premises; and

C. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Lender hereby consents to the Lease to the extent that Lender's consent is required, if at all, pursuant to the Deed of Trust or any other agreement(s) pertaining to the Property.

2. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Deed of Trust insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Deed of Trust had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

3. In the event Lender takes possession of the Premises as mortgagee-in-possession or lender-in-possession or its substantive equivalent, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Deed of Trust, Lender agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Lender's rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

4. In the event that Lender succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Lender and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Lender and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Lender succeeded to the interest of Landlord; provided, however, that Lender will not be:

(a) personally liable for any act or omission of any prior landlord (including Landlord); or

(b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

5. In the event that Lender or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Deed of Trust, or upon the sale of the Premises by Lender or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 4 above) under all of the terms, covenants and conditions of the Lease.

6. Lender understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Deed of Trust and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Lender will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Lender hereby expressly waives any interest which Lender may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Lender hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

7. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "**Lender**", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Lender and/or the Deed of Trust, whether directly or indirectly.

8. This Agreement may be executed in two (2) or more counterpart originals, and when the original counterpart signatures are assembled together, shall constitute one integrated instrument. All parties need not sign the same counterpart.

9. This Agreement will be governed by the laws of the state in which the Premises are located without regard to conflicts of law.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

"**LANDLORD**"

City of Muskegon,
a Michigan municipal corporation

By: ______________________________
Name: ____________________________
Its: ______________________________
Date: ________________________, 20__

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ______________________________
Name: ____________________________
Its: ______________________________
Date: ________________________, 20__

"LENDER"

________________,
a ________________

By: ______________________________
Name: ____________________________
Its: ______________________________
Date: ________________________, 20__

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING THREE (3) PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _________________________)
)
COUNTY OF _______________________)

I CERTIFY that on ______________ _____, 202__, _______________________________ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the ____________________ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

____
Notary Public: ______________________________
My Commission Expires:_____________________

TENANT ACKNOWLEDGMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ____________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ______________________________ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ________________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ____________________

LENDER ACKNOWLEDGMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that _________________________________ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____________________ of ________________________, ___________________to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ________________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

____
My appointment expires: ____________________

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

The Property is legally described as follows:

The Premises is legally described as follows:

[One (1) Page Depiction of the Premises Suitable for Recording in __________ County
Appears on Following Page

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

[INSERT AS APPLICABLE]

EXHIBIT 12

STANDARD ACCESS LETTER

[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff
[Landlord, Lessee, Licensee]
[Street Address]
[City, State, Zip]

Re: Authorized Access granted to [ ]

Dear Building and Security Staff,

Please be advised that we have signed a lease with [ ] permitting [ ] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [ ] and its representatives, employees, agents and subcontractors ("representatives") 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [ ] representatives may be seeking access to the property outside of normal business hours. [ ] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

____
Landlord Signature

EXHIBIT 24(b)

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

PARCEL #: 61-24-205-007-0003-00, 61-24-205-005-00001-10

Prepared by, and
after recording return to:
MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013

Cell Site No.: **GRANMI5602**
Cell Site Name: **Muskegon Marshall WT (MI)**
Fixed Asset No.: **10124756**
State: **Michigan**
County: **Muskegon**

MEMORANDUM OF LEASE

This Memorandum of Lease is entered into on this _____ day of ____________________, 202___, by and between City of Muskegon, a Michigan municipal corporation, having its principal office/residing at 933 Terrace Street, Muskegon, MI 49443 (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

1. Landlord and Tenant entered into a certain Structure Lease Agreement ("**Agreement**") on the ___ day of ______________, 202___, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The initial lease term will be ten (10) years commencing on October 1, 2018, with five (5) successive automatic five (5) year options to renew.

3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.

4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.

5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall

control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

City of Muskegon,
a Michigan municipal corporation

By: ______________________________
Print Name: _______________________
Its: ______________________________
Date: _____________________________

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ______________________________
Print Name: _______________________
Its: ______________________________
Date: _____________________________

[ACKNOWLEDGMENTS APPEAR ON TWO NEXT PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _________________________)
)
COUNTY OF _______________________)

I CERTIFY that on ______________ _____, 202__, ________________________________ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the ____________________ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

____
Notary Public: _____________________________
My Commission Expires:_____________________

TENANT ACKNOWLEDGMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ___________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ____________________________ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company,** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ____________________

EXHIBIT 1 TO MEMORANDUM OF LEASE

DESCRIPTION OF PROPERTY AND PREMISES

Page ___ of ___

to the Memorandum of Lease dated _______________, 20___, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Marshall Tank –

East 198 feet of west 660 feet of south 100 feet of Block 5.

The Premises are described and/or depicted as follows:

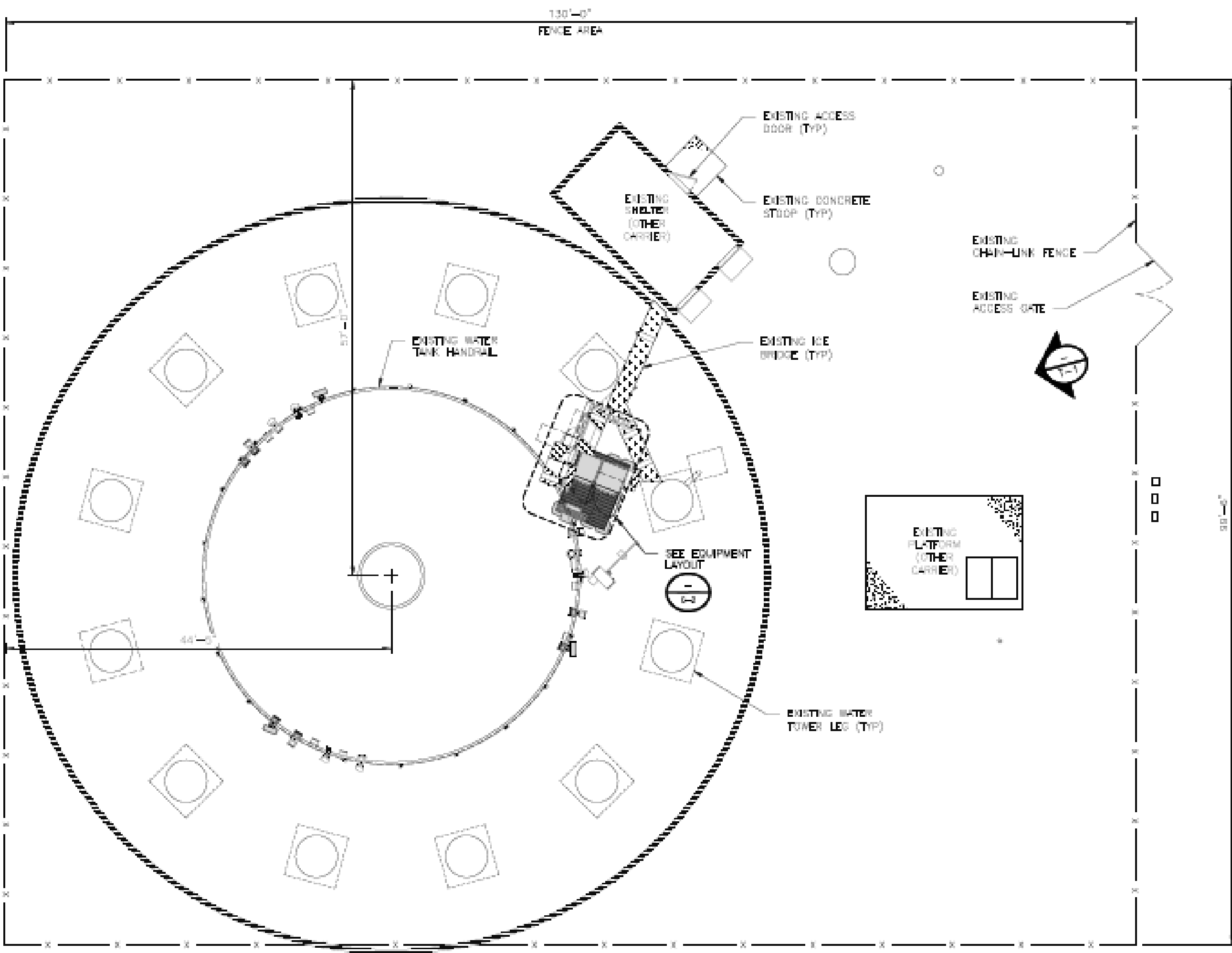


EXHIBIT 24(k)

IRS FORM W-9
Page 1 of 1

[IRS FORM W-9 (REVISED OCTOBER 2018)
APPEAR ON FOLLOWING PAGE]

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ ______

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) ______

Exemption from FATCA reporting code (if any) ______

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person ▶** **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

• Form 1099-INT (interest earned or paid)

• Form 1099-DIV (dividends, including those from stocks or mutual funds)

• Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)

• Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)

• Form 1099-S (proceeds from real estate transactions)

• Form 1099-K (merchant card and third party network transactions)

• Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)

• Form 1099-C (canceled debt)

• Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

Market: MI / IN
Cell Site Number: GRANMI5603
Cell Site Name: Muskegon Nims WT
Fixed Asset Number: 10124755

STRUCTURE LEASE AGREEMENT

THIS STRUCTURE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the **"Execution Date"**) and effective October 1, 2018 (the "**Effective Date**"), is entered into by City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1,** improved with a water tower (the "**Water Tower**"), together with all rights and privileges arising in connection therewith, located at 719 Nims Street, in the County of Muskegon, State of Michigan (collectively, the "**Property**"). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

Landlord and Tenant (or their predecessors-in-interest) entered into that certain Site Lease dated October 1, 1998, as amended by that certain First Amendment to the Site Lease dated January 29, 2009, as amended by that certain Second Amendment to the Site Lease dated August 17, 2012, as amended by that certain Third Amendment to the Site Lease dated September 23, 2014, and as further amended by that certain Fourth Amendment to the Site Lease dated November 10, 2014 (collectively, the "**Prior Lease**"), for the Premises defined below and the term of the Prior Lease expired on September 30, 2018. Landlord and Tenant agree that this Agreement shall be effective as of the Effective Date and as of the Effective Date, the Prior Lease shall be terminated and of no further force and effect and this Agreement replaces and supersedes the Prior Lease.

The parties agree as follows:

1. <u>LEASE OF PREMISES.</u> Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) approximately 100 square feet including the air space above such ground space, as described on attached **Exhibit 1,** for the placement of Tenant's Communication Facility;
(b) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (a) and (b) is the "**Equipment Space**");
(c) that certain space on the Water Tower, as generally depicted on **Exhibit 1,** including the air space above same, where Tenant shall have the right to install its antennas and other equipment (collectively, the "**Antenna Space**"); and
(d) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the "**Connection Space**"). Landlord agrees that Tenant shall have the right to install connections between Tenant's equipment in the Equipment Space and Antenna Space; and between Tenant's equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements, and will require written approval before installing a flammable fuel source such as natural gas or propane., which consent may be withheld in Landlord's sole discretion. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. All new installations of equipment and services by Tenant at the Premises shall require prior notice and approval by Landlord and Landlord's inspections department, such approvals not to be unreasonably withheld, conditioned

or delayed. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the **"Premises."**

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "**Communication Facility**" or "**Communication Facilities**"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. Tenant at no time can interfere/block access with the day to day operations of the Water Towers main functions and with the current tenants. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment, which shall not interfere with Landlord's or other tenants of the Water Tower or Property, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense. The addition of a generator may be added upon Landlord's written consent. Tenant has the right, to install, modify, supplement, replace, upgrade, expand the Communication Facility upon prior written notice and a passing structural analysis (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations. A pre inspection report including a tip over analysis is required along with a post-inspection report to verify ono no damage has occurred to Landlord's facilities. All inspections must be completed by an engineering company such as Dixon Engineering. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage. of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**

(a) The initial lease term will be ten (10) years (the "**Initial Term**"), commencing on October 1, 2018. The Initial Term will terminate on the tenth (10th) anniversary of the Initial Term.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "**Term**."

4. <u>RENT.</u>

(a) Commencing on October 1, 2022 (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Four Thousand Five Hundred Ninety and No/100 Dollars ($4,590.00) (the "**Rent**"), at the address set forth above. The Rent shall continue during the Term, subject to adjustment as provided herein: on each anniversary of the Rent Commencement Date, including throughout any Extension Term exercised, the Rent will increase by two percent (2%) over the Rent paid during the previous year, and every year thereafter. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within ninety (90) days after the Rent Commencement Date.

(b) Modification of Tenant's Obligation to Pay – Rent Guarantee. Notwithstanding Tenant's obligations to pay Rent set forth under the Agreement, for a sixty (60) month period commencing October 1, 2022, and ending September 30, 2027, ("**Rent Guarantee Period**"), Tenant's obligation to pay Rent is guaranteed and such obligation will not be subject to offset or cancellation by Tenant. Notwithstanding the foregoing, if Landlord exercises any of Landlord's rights to terminate the Agreement, if any, other than the Landlord's right to terminate the Agreement due to the default of Tenant under the terms of the Agreement beyond any applicable grace period, Tenant will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, Tenant shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if the following shall occur: (a) Landlord is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (b) there is a foreclosure of the Agreement which results in a termination of the Agreement; or (c) the Landlord shall require Tenant to relocate Tenant's equipment and facilities to a location that is not acceptable to Tenant in its reasonable business judgment if allowed for in the Agreement.. If the Agreement is further modified in the future with an obligation for Tenant to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. <u>APPROVALS.</u>

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant, at Tenant's sole cost and expense, has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. <u>TERMINATION.</u> This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 8 Interference, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty; or,

(f) by Landlord upon any of the following events: (i) upon two (2) years prior written notice if Landlord determines that after the Initial Term of this Agreement, or upon two (2) years prior written notice before the conclusion of any renewals of this Agreement, that the Tenant's Permitted Use of the Premises under this Agreement is no longer in the Landlord's best interest, in its sole discretion; (ii) if Landlord determines that Tenant's Permitted Use of the Premises under this Agreement (including Tenant's operation of its communications equipment) is interfering with the rights of Landlord or other tenants currently on the Property and that the issue cannot be remediated by Tenant; or (iii) if Tenant is in default of the terms of this Agreement and the default has not been cured under Section 15.

7. <u>INSURANCE.</u> During the Term, Tenant, at Tenant's sole cost and expense, will carry and maintain in effect a commercial general liability insurance per ISO form CG 00 01 or its equivalent, insuring against bodily injury and property damage. Said policy of commercial general liability insurance will provide a combined single limit of One Million and No/100 Dollars ($1,000,000.00) per occurrence and in aggregate. Tenant shall provide Landlord with a certificate of insurance evidencing such coverage which states that the carrier has insured Tenant for the required insurance policies liabilities under this Lease. Tenant will provide at least 30 days written notice to Landlord, of cancellation or non-renewal of any required coverage that is not replaced. Landlord shall be included to the policy as an additional insured by endorsement as respects to this Agreement.

8. <u>INTERFERENCE</u>.

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) on the Property as of the Effective Date; provided, however, it shall be Tenant's sole responsibility to determine the actual radio frequencies used by such user(s). Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Tenant will not, nor will Tenant permit its employees, tenants, licensee, invitees, agents, or independent contractors to interfere in any way with the operations of Landlord or other tenants of the Water Tower or Premises, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Tenant's installation, operation, and maintenance of its Communication Facilities shall not damage or interfere with Landlord's Water Tower and/or the Property's operations or related repair and maintenance activities. Landlord, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Property in connection with city operations as may be necessary, including leasing parts of the Water Tower and/or Property and surrounding ground space to others.

(f) Tenant acknowledges and agrees that the primary purpose of the Water Tower is to provide water storage for Landlord and its customers. Tenant understands that Landlord may have to interrupt Tenant's use of the Premises from time to time to service, maintain, or repair the Water Tower. Accordingly, Landlord reserves the right at all times during this Agreement to take any action it deems necessary in its sole discretion to repair, maintain, alter, or improve the Property and shall not be liable to Tenant for any temporary interference with Tenant's use as a result of actions necessary to carry out any such activities. Notwithstanding the foregoing, Landlord agrees to provide Tenant with reasonable advance notice of any planned activities, emergencies excepted, and to carry out such activities in a manner to minimize interruptions with Tenant's use.

9. Intentionally deleted.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) To the extent permitted by state or municipal law, and except as otherwise previously disclosed by Landlord to Tenant prior to the date of this Agreement, Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Water Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord ; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

(c) Tenant currently leases a portion of the Property pursuant to the Prior Lease, and Tenant acknowledges and agrees that Tenant is familiar with the condition of the Premises and agrees to accept the physical condition of the Premises in "AS IS" condition. Tenant further acknowledges and agrees that Tenant is relying solely on its own investigation of the Premises and not on any information provided to or to be provided by Landlord. Tenant agrees to accept the Premises and waive all objections or claims against Landlord arising from or related to the Premises, except for a breach of any representations, warranties, or covenants set forth in this Agreement.

11. <u>ENVIRONMENTAL.</u>

(a) . Notwithstanding the foregoing, Landlord represents that it has no knowledge of the presence of or contamination by any hazardous substances on the Property in violation of any applicable federal, state, or local law or regulation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

12. <u>ACCESS.</u> At all times throughout the Term of this Agreement, Tenant and its employees, agents, and subcontractors, will require twenty-four (24) hour access for pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. There is a sign at the access point that will need to be called to, to provide access to enter the Premises in the case of emergencies. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("**UAS**") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement.

13. <u>REMOVAL/RESTORATION.</u> All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. <u>MAINTENANCE/UTILITIES.</u>

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Water Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event

Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(c) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant sub-meters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. <u>DEFAULT AND RIGHT TO CURE.</u>

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the reasonable costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. <u>ASSIGNMENT/SUBLEASE.</u> This Agreement may not be assigned or subleased without the prior written consent of Landlord, which consent may be withheld for any reason or no reason in Landlord's sole discretion. Notwithstanding the foregoing, this Agreement may be assigned without Landlord consent to an entity that controls, is controlled by, or is under the common control of Tenant, or to any entity resulting from any merger or consolidation with Tenant, or to any partner of Tenant, or to any person or entity that acquires all of the assets of Tenant as a going concern, provided that Tenant shall indemnify and hold Landlord harmless.

Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that any permitted assignee or subtenant shall be required to comply with all applicable laws including all licensing and/or permitting requirements imposed by all governmental entities having jurisdiction over the Premises.

17. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant:

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: Cell Site #: GRANMI5603; Cell Site Name: Muskegon Nims WT (**MI**)
Fixed Asset #: 10124755
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: GRANMI5603; Cell Site Name: Muskegon Nims WT (**MI**)
Fixed Asset #: 10124755
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord:

City of Muskegon
933 Terrace Street
Muskegon, MI 49443
Attn: Dave Baker

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (x) all property taxes, real or personal, directly attributable to its occupancy and use of the Property, (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant, which consent shall not be unreasonably withheld.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. <u>SALE OF PROPERTY.</u>

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

i. Old deed to Property
ii. New deed to Property
iii. Bill of Sale or Transfer
iv. Copy of current Tax Bill
v. New IRS Form W-9
vi. Completed and Signed Tenant Payment Direction Form
vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the

Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. <u>RIGHT OF FIRST REFUSAL</u>. Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. <u>MISCELLANEOUS.</u>

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability**. Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law**. Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival**. Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address. A copy of the IRS Form 1-9 in its current form is attached hereto as **Exhibit 24(k)**.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL**. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

(o) **Estoppel.** Landlord acknowledges that there are not any owed or outstanding rental payments or fees due on the part of Tenant.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

"**LANDLORD**"

City of Muskegon
a Michigan municipal corporation

By: ______________________________
Print Name: _______________________
Its: _______________________________
Date: _____________________________

"**TENANT**"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ______________________________
Print Name: _______________________
Its: _______________________________
Date: _____________________________

[ACKNOWLEDGMENTS APPEAR ON NEXT TWO PAGES]

TENANT ACKNOWLEDGMENT

STATE OF _______________)
) SS.
COUNTY OF _____________)

I certify that I know or have satisfactory evidence that __________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ___________________________ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ___________________

LANDLORD ACKNOWLEDGMENT

STATE OF _________________________)
)
COUNTY OF _______________________)

I CERTIFY that on ______________ _____, 202__, ________________________________ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the ____________________ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

____
Notary Public: ______________________________
My Commission Expires:______________________

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page ___ of ___

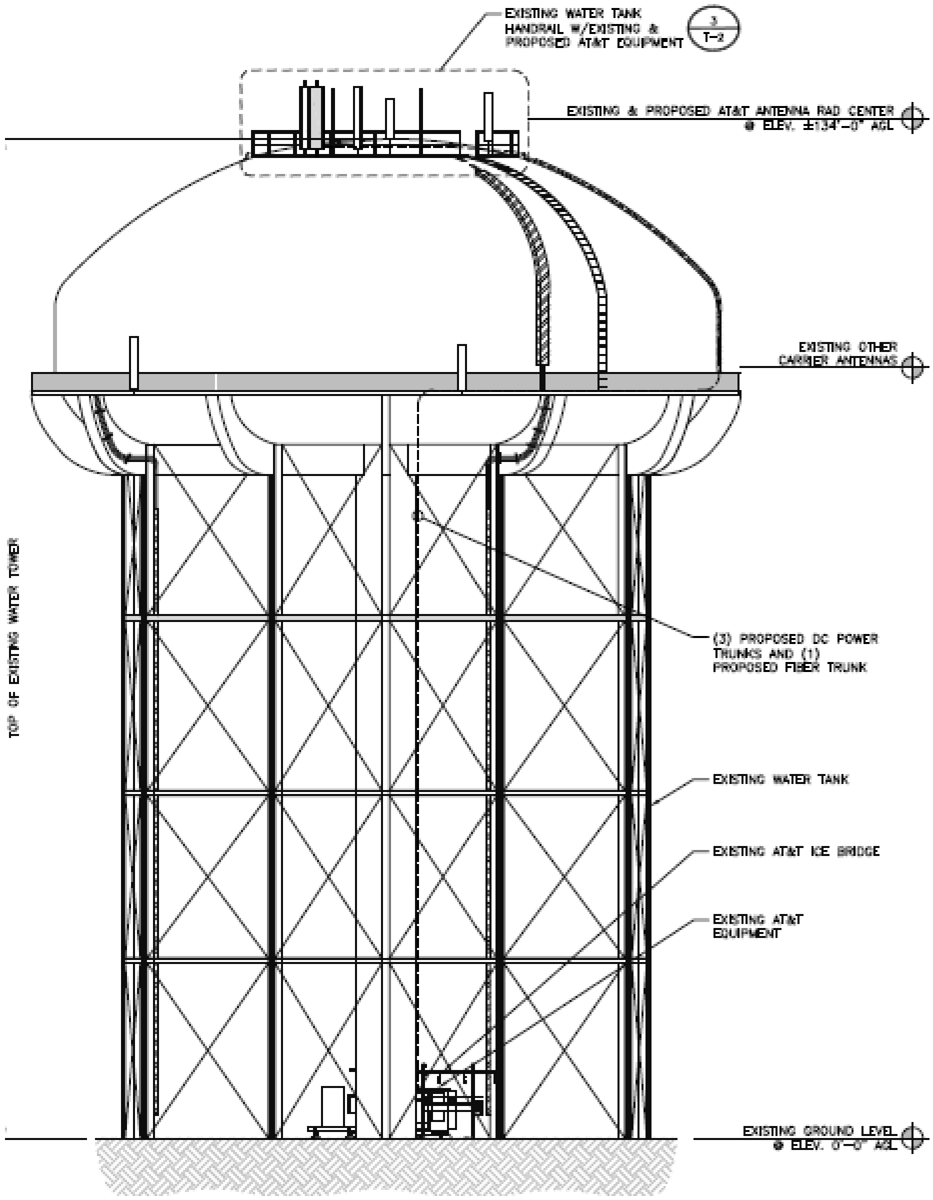
to the Structure Lease Agreement dated _____________, 202__, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Nims Tank –

A triangular piece of land bounded by Nims Street, Superior Street and Dale Avenue

The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 10(b)

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

[FOLLOWS ON NEXT PAGE]

Recording Requested By
<u>& When Recorded Return To:</u>

New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
1025 Lenox Park Blvd NE, 3rd Floor
Atlanta, GA 30319

APN: _______________

(Space Above This Line For Recorder's Use Only)

Cell Site No.: **GRANMI5603**
Cell Site Name: **Muskegon Nims WT (MI)**
Fixed Asset No.: **10124755**
State: **Michigan**
County: **Muskegon**

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), dated as of the last of the signature dates below (the "**Effective Date**"), is entered into by and among City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 ("**Lender**"), _______________, a _______________, having a mailing address of _______________ ("**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**")..

RECITALS:

A. Tenant has entered into a certain Structure Lease Agreement dated _______________, 202__, (the "**Lease**") with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the "**Premises**"); and

B. Lender has made a loan to Landlord in the original principal sum of ____________________________ Dollars ($________), which loan has been secured by a certain _______________dated _______________, and recorded on ________________, as Document Number ______________ in the Official Records of the County Recorder of _____________ County, California (the "**Deed of Trust**"), upon that certain real property located at ______________, in the City of _______, County of __________, State of California __________ [APN: _____________] ("**Property**"), a part of which Property contains the Premises; and

C. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Lender hereby consents to the Lease to the extent that Lender's consent is required, if at all, pursuant to the Deed of Trust or any other agreement(s) pertaining to the Property.

2. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Deed of Trust insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Deed of Trust had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

3. In the event Lender takes possession of the Premises as mortgagee-in-possession or lender-in-possession or its substantive equivalent, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Deed of Trust, Lender agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Lender's rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

4. In the event that Lender succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Lender and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Lender and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Lender succeeded to the interest of Landlord; provided, however, that Lender will not be:

(a) personally liable for any act or omission of any prior landlord (including Landlord); or

(b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

5. In the event that Lender or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Deed of Trust, or upon the sale of the Premises by Lender or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 4 above) under all of the terms, covenants and conditions of the Lease.

6. Lender understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Deed of Trust and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Lender will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Lender hereby expressly waives any interest which Lender may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Lender hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

7. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "**Lender**", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Lender and/or the Deed of Trust, whether directly or indirectly.

8. This Agreement may be executed in two (2) or more counterpart originals, and when the original counterpart signatures are assembled together, shall constitute one integrated instrument. All parties need not sign the same counterpart.

9. This Agreement will be governed by the laws of the state in which the Premises are located without regard to conflicts of law.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

"**LANDLORD**"

City of Muskegon,
a Michigan municipal corporation

By: ______________________________
Name: ___________________________
Its: ______________________________
Date: ________________________, 20__

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ______________________________
Name: ___________________________
Its: ______________________________
Date: ________________________, 20__

"LENDER"

________________,
a ________________

By: ______________________________
Name: ___________________________
Its: ______________________________
Date: ________________________, 20__

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING THREE (3) PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF ________________________)
)
COUNTY OF ______________________)

I CERTIFY that on ______________ _____, 202__, _______________________________ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the ____________________ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

____
Notary Public: _____________________________
My Commission Expires:_____________________

TENANT ACKNOWLEDGMENT

STATE OF ________________)
)   SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ____________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ____________________________ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company,** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ________________________________.

Notary Seal

____
(Signature of Notary)
____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ____________________

LENDER ACKNOWLEDGMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that _________________________________ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____________________ of ________________________, ___________________to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: ________________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of
____
My appointment expires: ____________________

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

The Property is legally described as follows:

The Premises is legally described as follows:

[One (1) Page Depiction of the Premises Suitable for Recording in __________ County
Appears on Following Page

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

[INSERT AS APPLICABLE]

EXHIBIT 12

STANDARD ACCESS LETTER

[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff
[Landlord, Lessee, Licensee]
[Street Address]
[City, State, Zip]

Re: Authorized Access granted to [ ]

Dear Building and Security Staff,

Please be advised that we have signed a lease with [ ] permitting [ ] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [ ] and its representatives, employees, agents and subcontractors ("representatives") 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [ ] representatives may be seeking access to the property outside of normal business hours. [ ] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

____

Landlord Signature

EXHIBIT 24(b)

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

PARCEL #: 24-129-400-0002-00

Prepared by, and
after recording return to:
MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013

Cell Site No.: **GRANMI5603**
Cell Site Name: **Muskegon Nims WT** (**MI**)
Fixed Asset No.: **10124755**
State: **Michigan**
County: **Muskegon**

MEMORANDUM
OF
LEASE

This Memorandum of Lease is entered into on this _____ day of ____________________, 202___, by and between City of Muskegon, a Michigan municipal corporation, having its principal office/residing at 933 Terrace Street, Muskegon, MI 49443 (hereinafter called "**Landlord**"), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

1. Landlord and Tenant entered into a certain Structure Lease Agreement ("**Agreement**") on the ___ day of ______________, 20___, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The initial lease term will be ten (10) years commencing on October 1, 2018, with five (5) successive automatic five (5) year options to renew.

3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.

4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.

5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall

control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

City of Muskegon,
a Michigan municipal corporation

By: ______________________________
Print Name: _______________________
Its: _______________________________
Date: _____________________________

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: ______________________________
Print Name: _______________________
Its: _______________________________
Date: _____________________________

[ACKNOWLEDGMENTS APPEAR ON TWO NEXT PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _________________________)
)
COUNTY OF _______________________)

I CERTIFY that on ______________ _____, 202__, _______________________________ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the ____________________ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;

(b) was authorized to execute this instrument on behalf of the corporation; and

(c) executed the instrument as the act of the corporation.

____
Notary Public: _____________________________
My Commission Expires:_____________________

TENANT ACKNOWLEDGMENT

STATE OF ________________)
) SS.
COUNTY OF ______________)

I certify that I know or have satisfactory evidence that ___________________________________ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the ____________________________ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company,** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _______________________________.

Notary Seal

____
(Signature of Notary)

____
(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of ___________
My appointment expires: ____________________

EXHIBIT 1 TO MEMORANDUM OF LEASE

DESCRIPTION OF PROPERTY AND PREMISES

Page ___ of ___

to the Memorandum of Lease dated _______________, 20___, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Nims Tank –

A triangular piece of land bounded by Nims Street, Superior Street and Dale Avenue

The Premises are described and/or depicted as follows:

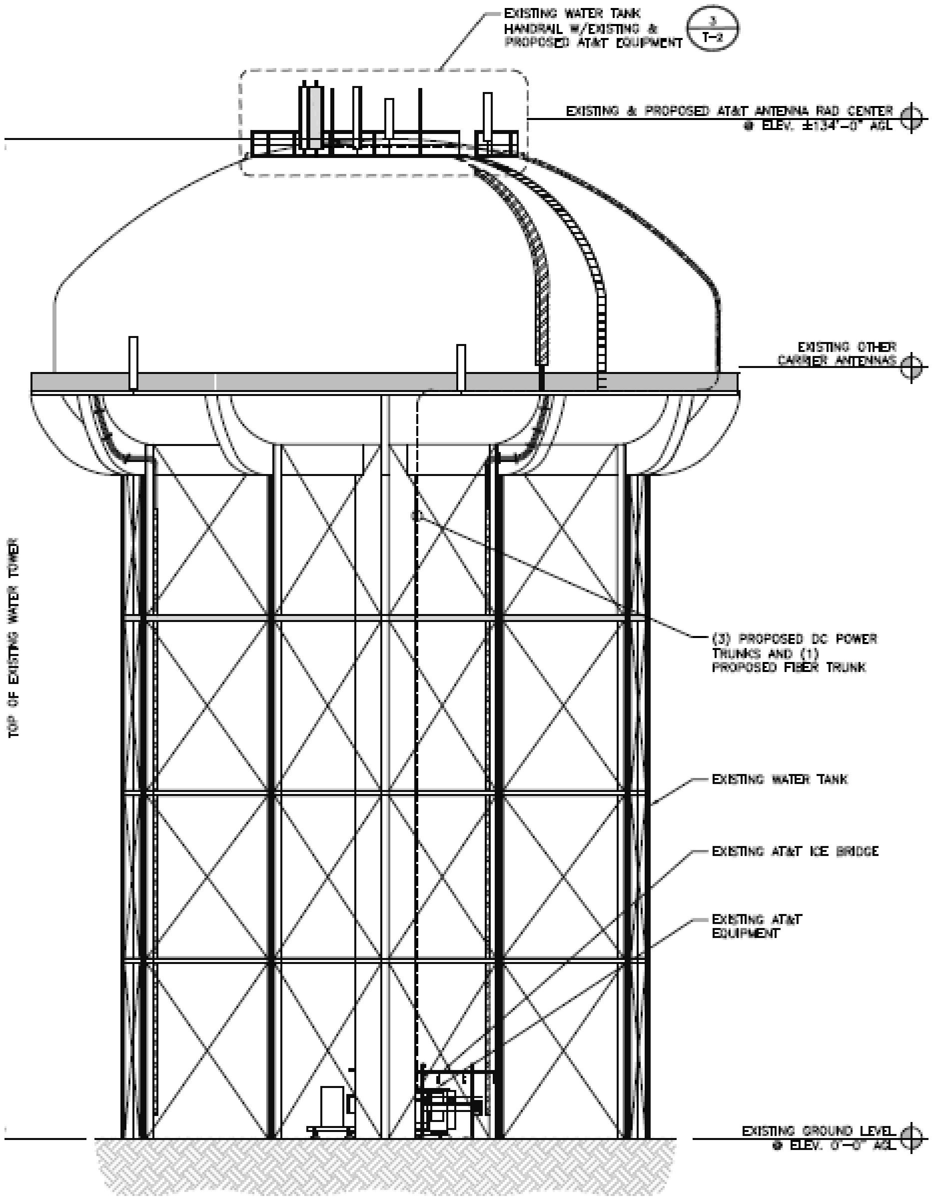

EXISTING WATER TANK
HANDRAIL W/EXISTING &
PROPOSED AT&T EQUIPMENT
3
T-2
EXISTING & PROPOSED AT&T ANTENNA RAD CENTER
@ ELEV. ±134'-0" AGL
EXISTING OTHER
CARRIER ANTENNAS
TOP OF EXISTING WATER TOWER
(3) PROPOSED DC POWER
TRUNKS AND (1)
PROPOSED FIBER TRUNK
EXISTING WATER TANK
EXISTING AT&T ICE BRIDGE
EXISTING AT&T
EQUIPMENT
EXISTING GROUND LEVEL
@ ELEV. 0'-0" AGL

EXHIBIT 24(k)

IRS FORM W-9
Page 1 of 1

[IRS FORM W-9 (REVISED OCTOBER 2018)
APPEAR ON FOLLOWING PAGE]

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

▶ Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

Print or type. See **Specific Instructions** on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any)

Exemption from FATCA reporting code (if any)

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN,* later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number

☐☐ – ☐☐☐☐☐☐☐

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here | **Signature of U.S. person ▶** | **Date ▶**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9.*

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, *later.*

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Water Supply System Bonds
Submitted By: Kenneth D. Grant	Department: Finance

Brief Summary:

Ordinance authorizing the issuance of Water Supply System Junior Lien Revenue Bonds

Detailed Summary & Background:

To authorize the issuance of Water Supply System Bonds in an amount not to exceed $8,865,000. The Bonds are expected to be sold to the Michigan Finance Authority and payable in 20 annual principal installments at an interest rate of 1.875%. Scheduled closing is September 20th.

Estimated Principal Forgiveness: These numbers are still being finalized and do not include the reductions for the ARPA Grant and principal forgiveness, which is 75% of the project cost amount, leaving the amount of the loan to be repaid of $2,216,250.

Goal/Focus Area/Action Item Addressed: Sustainability in financial practices and infrastructure. Reduce infrastructure burden on residents.

Amount Requested: (Per Meeting 7/11/23)	Budgeted Item: Yes ☒ No ☐
Fund(s) or Account(s): 591 (Water)	Budgeted Amendment Needed: Yes ☐ No ☒

Recommended Motion: I move approval of the ordinance authorizing the issuance of Water Supply System Revenue Bonds.

Approvals:		Legal Review	☒	Guest(s) Invited / Presenting
Immediate Division Head	☒	Information Technology	☐	Yes ☐
Other Division Heads	☒	Communication	☒	No ☒

Founded in 1852
by Sidney Davy Miller

PATRICK F. MCGOW
TEL (313) 496-7684
FAX (313) 496-8450
E-MAIL mcgow@millercanfield.com

MILLER CANFIELD

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Detroit, Michigan 48226
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FAX (313) 496-7500
www.millercanfield.com

MICHIGAN
ILLINOIS
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CANADA
CHINA
MEXICO
POLAND
QATAR

July 13, 2023

Mr. Ken Grant
Finance Director
City of Muskegon
933 Terrace Street
Muskegon MI 49443-0536

Re: City of Muskegon
$3,910,000 Sanitary Sewer System Junior Lien Revenue Bonds, Series 2023
(CWSRF Project 5790-01)
$8,865,000 Water Supply System Junior Lien Revenue Bonds, Series 2023
(DWSRF Project 7467-01)

Dear Ken:

I have enclosed an Ordinance authorizing the issuance of the above-captioned Sanitary Sewer System Revenue Bonds and an Ordinance authorizing the issuance of the above-captioned Water Supply System Revenue Bonds to be considered for approval by the City Commission at its meeting on July 25th. The Sewer Bonds and the Water Bonds are to be sold through the Michigan Finance Authority's ("MFA") Quarter 4B Clean Water State Revolving Fund Program and Drinking Water State Revolving Fund Program, respectively, scheduled to close on September 8th.

Sewer Bonds

The Sewer Bond Ordinance authorizes the issuance of the Bonds in an amount not to exceed $3,910,000 for the sewer projects. Of that amount, approximately $1,955,000 of the principal will be forgiven, leaving the amount of the loan to be repaid of $1,955,000. The Ordinance provides flexibility for the actual size of the Bond issue to be reduced prior to closing based on the actual construction bids and final approved costs. In addition, the City will receive principal forgiveness for this project which will reduce the amount that needs to be paid back to the MFA.

The Sewer Bond Ordinance authorizes the issuance of the Series 2023 Bonds, which are payable from the Net Revenues of the City's Sanitary Sewer System. The Bonds are expected to be sold to the MFA and payable in 20 annual principal installments at an interest rate of 1.875%. The Bonds are being issued as junior lien bonds which are of equal standing with the Series 2019

Bonds, Series 2020 Bonds and Series 2022 Bonds previously issued through the SRF for sewer improvements.

Water Bonds

The Water Bond Ordinance authorizes the issuance of the Bonds in an amount not to exceed $8,865,000, based on the numbers in the EGLE Project Cost Summary. These numbers are still being tweaked and do not include the reductions for the ARPA Grant and principal forgiveness, which is 75% of the project cost amount, leaving the amount of the loan to be repaid of $2,216,250. But because we don't have the breakdown between the ARPA Grant and principal forgiveness yet, we are including the full project amount even though the loan amount, and amount to be repaid, will be substantially less. Again, the Ordinance provides flexibility for the actual size of the Bond issue to be reduced prior to closing based on the actual construction bids and final approved costs. In addition, the City will receive principal forgiveness for these projects which will reduce the amount that needs to be paid back to the MFA.

The Water Bond Ordinance authorizes the issuance of the Series 2023 Bonds, which are payable from the Net Revenues of the City's Water Supply System. The Bonds are expected to be sold to the MFA and payable in 20 annual principal installments at an interest rate of 1.875%. The Bonds are being issued as junior lien bonds which are of equal standing with the Series 2004 Bonds, Series 2019 Bonds, Series 2020 Bonds, Series 2022A Bonds and Series 2022B Bonds previously issued through the DWRF for water improvements.

Both Water and Sewer Bonds

Both Ordinances also authorize various City officials to take the necessary actions to execute and deliver the Bonds and all related documents, approve the final size of the Bonds and contains the necessary items required by the Revenue Bond Act, Act 94 of 1933.

Pursuant to the Revenue Bond Act, the Ordinances may be adopted in one reading, regardless of any contrary provision in the City's ordinance adoption procedures. Each Ordinance is required to be published once in full in your local newspaper (*Muskegon Chronicle*) after its adoption. There are no restrictions or requirements on the size of the publication, so it can be as small as possible. Upon adoption by the City Commission, we would appreciate receiving three (3) certified copies of the Ordinance and three (3) Affidavits of Publication of the Ordinance for bond transcripts.

The Part III application with the construction bids and tentative contract approval was submitted last week, with the tentative contract approvals approved at the July 11th City Commission meeting. There will be a conference call with MFA, EGLE and City officials on July 31st at 1:40 p.m. which we will participate in, to make final arrangements relating to the Bond terms. At that time, the final bond sizes will be determined, and we will prepare the necessary documents to be signed by various City officials after that date regarding the sale and delivery of the Bonds. The EGLE Order of Approval is expected to be issued on August 29th. The closing for the Bonds will be September 20th and the City can begin requesting draws on the Bonds after that date.

If you or anyone copied have any questions, please do not hesitate to contact me.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: ______________________________
Patrick F. McGow

Enclosure
cc: Jonathan Seyferth
LeighAnn Mikesell
Dan Vanderheide
Barbara Marczak
Warren Creamer
Stacey Mills

40833809.1/063684.00058

ORDINANCE NO. _____
CITY OF MUSKEGON

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, INSTALLATION, FURNISHING AND EQUIPPING OF ADDITIONS AND IMPROVEMENTS TO THE WATER SUPPLY SYSTEM OF THE CITY; TO PROVIDE FOR THE ISSUANCE AND SALE OF JUNIOR LIEN REVENUE BONDS TO PAY THE COST THEREOF; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF SYSTEM REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS IN ENFORCEMENT THEREOF; TO PRESCRIBE THE FORM OF THE BONDS; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE BONDS AND THE SYSTEM.

THE CITY OF MUSKEGON ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

(a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.

(b) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds and payments to the City in lieu of taxes, to which may be made the following adjustments.

(i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect.

(ii) Revenues may be augmented by amounts which may be derived from rates and charges to be paid by new customers of the System.

(c) "Authority" means the Michigan Finance Authority or its successor.

(d) "Authorized Officers" means the Mayor, the City Manager, the City Clerk and the Finance Director of the City.

(e) "Bonds" or "Senior Lien Bonds" means any bonds or series of bonds so designated and payable from Net Revenues, which are secured by a statutory first lien on the Net Revenues established by this Ordinance and which are senior and superior in all respects with respect to the Net Revenues to any Junior Lien Bonds secured by the statutory second lien on the Net Revenues, together with any additional Bonds of equal standing thereafter issued.

(f) "City" or "Issuer" means the City of Muskegon, County of Muskegon, State of Michigan.

(g) "EGLE" means the means the Michigan Department of Environment, Great Lakes, and Energy, or its successor.

(h) "Engineers" means Prein & Newhof, registered engineers of Grand Rapids, Michigan.

(i) "Junior Lien Bonds" means the Series 2023 Bond, the Outstanding Junior Lien Bonds any additional bonds of equal standing with the Series 2023 Bond and the Outstanding Junior Lien Bonds which are secured by a statutory second lien on the Net Revenues and are junior and subordinate to the Senior Lien Bonds.

(j) "Outstanding Junior Lien Bonds" means the Series 2004 Bond, Series 2019 Bond, Series 2020 Bond and Series 2022 Bonds.

(k) "Outstanding Ordinances" means Ordinance Nos. 2117, 2416, 2436 and 2468 of the City.

(l) "Project" means the acquisition, construction, furnishing and equipping of improvements to the Water Supply System of the City, including distribution system improvements, replacement of water mains and service lines, pump station and water filtration plant improvements, together with all related appurtenances and attachments.

(m) "Purchase Contract" means the Purchase Contract to be entered into between the Authority and the City relating to the purchase by the Authority of a series of the Series 2023 Bond.

(n) "Revenues" and "Net Revenues" shall mean the revenues and net revenues of the City derived from the operation of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues," the earnings derived from the investment of moneys in the various funds and accounts established by the Outstanding Ordinances and this Ordinance.

(o) "Series 2004 Bond" means the Water Supply System Junior Lien Revenue Bond (Limited Tax General Obligation), Series 2004, dated March 25, 2004, in the outstanding principal amount of Two Million Four Hundred Seventy-Five Thousand Dollars ($2,475,000).

(p) “Series 2019 Bond” means the Water Supply System Junior Lien Revenue Bond, Series 2019, dated August 28, 2019, in the outstanding principal amount of One Million Four Hundred Sixty-Five Thousand Dollars ($1,465,000).

(q) “Series 2020 Bond” means the Water Supply System Junior Lien Revenue Bond, Series 2020, dated September 30, 2020, in the outstanding principal amount of Three Million Five Hundred Thirty Thousand Dollars ($3,530,000).

(r) “Series 2022 Bonds” means the Series 2022A Bonds and the Series 2022B Bonds.

(s) “Series 2022A Bond” means the Water Supply System Junior Lien Revenue Bond, Series 2023, dated September 20, 2022, in the principal amount of not to exceed One Million One Hundred Thirty-Eight Thousand One Hundred Thirty Dollars ($1,138,130).

(t) “Series 2022B Bond” means the Water Supply System Junior Lien Revenue Bond, Series 2023, dated September 20, 2022, in the principal amount of not to exceed Two Hundred Forty Thousand Dollars ($240,000).

(u) “Series 2023 Bond” means the Water Supply System Junior Lien Revenue Bond, Series 2023, in the principal amount of not to exceed Eight Million Eight Hundred Sixty-Five Thousand Dollars ($8,865,000) authorized by this Ordinance.

(v) “Sufficient Government Obligations” means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds or Junior Lien Bonds and the principal and redemption premium, if any, on the Bonds or Junior Lien Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds or Junior Lien Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(w) “Supplemental Agreement” means the supplemental agreement among the City, the Authority and the EGLE relating to a series of the Series 2023 Bond.

(x) “System” means the Water Supply System of the City, including the Project and all additions, extensions and improvements hereafter acquired.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the City to acquire and construct the Project in accordance with the plans and specifications prepared by the Engineers, which plans and specifications are hereby approved. The Project qualifies for the Drinking Water State Revolving Fund financing program being administered by the EGLE and the Authority, whereby bonds of the City are sold to the

Authority and bear interest at a fixed rate of not to exceed one and seven-eighths percent (1.875%) per annum.

Section 3. Costs; Useful Life. The cost of the Project is estimated to be an amount not to exceed Nine Million Two Hundred Five Thousand Dollars ($9,205,000), including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed. The period of usefulness of the Project is estimated to be not less than twenty-five (25) years.

Section 4. Payment of Cost; Bonds Authorized. To pay part of the cost of acquiring the Project, legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2023 Bond, the City shall borrow the sum of not to exceed Eight Million Eight Hundred Sixty-Five Thousand Dollars ($8,865,000), and issue the Series 2023 Bond therefor pursuant to the provisions of Act 94. The remaining cost of the Project, if any, shall be defrayed from grant funds and City funds on hand and legally available for such use.

Except as amended by or expressly provided to the contrary in this Ordinance, all of the provisions of the Outstanding Ordinances shall apply to the Series 2023 Bond issued pursuant to this Ordinance, the same as though each of the provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of additional revenue bonds of junior and subordinate standing and priority of lien to any Outstanding Senior Lien Bonds and of equal standing and priority of lien as to the Net Revenues with the Outstanding Junior Lien Bonds to finance the cost of acquiring additions, extensions and improvements to the System, additional bonds of junior and subordinate standing and priority of lien as to any Outstanding Senior Lien Bonds and of equal standing and priority of lien as to the Outstanding Junior Lien Bonds for such purpose being authorized by the provisions of the Outstanding Ordinances, upon the conditions therein stated, which conditions have been fully met.

Section 5. Issuance of Series 2023 Bond; Details. The Series 2023 Bond of the City, to be designated WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2023 is authorized to be issued in the aggregate principal sum of not to exceed Eight Million Eight Hundred Sixty-Five Thousand Dollars ($8,865,000), or such lesser amount as finally determined by order of the EGLE for the purpose of paying part of the cost of the Project, including the costs incidental to the issuance, sale and delivery of the Series 2023 Bond. The Series 2023 Bond shall be Junior Lien Bonds payable out of the Net Revenues, as set forth more fully in Section 8 hereof, provided that the Series 2023 Bond shall be subordinate to the prior lien with respect to the Net Revenues in favor of any Senior Lien Bonds hereafter issued.

The Series 2023 Bond shall be in the form of a single fully-registered, nonconvertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery, payable in principal installments as finally determined by the order of the EGLE at the time of sale of the Series 2023 Bond and approved by the Authority and an Authorized Officer. Principal installments of the Series 2023 Bond shall be payable on October 1 of the years 2025 through 2044, inclusive, or such other payment dates as hereinafter provided. Interest on the Series 2023 Bond shall be payable on April 1 and October 1 of each year, commencing April 1, 2024 or on such other interest payment dates as hereinafter provided. Final determination of the principal amount of and interest on the Series 2023 Bond and the payment dates and amounts of principal installments of the Series

2023 Bond shall be evidenced by execution of the Purchase Contract and each of the Authorized Officers is authorized and directed to execute and deliver the Purchase Contract when in final form and to make the determinations set forth above; provided, however, that the first principal installment shall be due no earlier than April 1, 2024 and the final principal installment shall be due no later than October 1, 2046 and that the total principal amount shall not exceed $8,865,000.

The Series 2023 Bond shall bear interest at a rate of not to exceed one and seven-eighths percent (1.875%) per annum on the par value thereof or such other rate as evidenced by execution of the Purchase Contract, but in any event not to exceed the rate permitted by law, and any Authorized Officers as shall be appropriate shall deliver the Series 2023 Bond in accordance with the delivery instructions of the Authority.

The principal amount of the Series 2023 Bond is expected to be drawn down by the City periodically, and interest on principal amount shall accrue from the date such principal amount is drawn down by the City.

The Series 2023 Bond shall not be convertible or exchangeable into more than one fully-registered bond. Principal of and interest on the Series 2023 Bond shall be payable as provided in the Series 2023 Bond form in this Ordinance.

The Series 2023 Bond shall be subject to optional redemption by the City with the prior written approval of the Authority and on such terms as may be required by the Authority.

The Treasurer shall record on the registration books payment by the City of each installment of principal or interest or both when made and the cancelled checks or other records evidencing such payments shall be returned to and retained by the Treasurer.

Upon payment by the City of all outstanding principal of and interest on the Series 2023 Bond, the Authority shall deliver the Series 2023 Bond to the City for cancellation.

Section 6. Execution of Series 2023 Bond. The Series 2023 Bond shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the City Clerk and shall have the corporate seal of the City or facsimile thereof impressed thereon. The Series 2023 Bond bearing the manual or facsimile signatures of the Mayor and the City Clerk sold to the Authority shall require no further authentication.

Section 7. Registration and Transfer. Any Bond or Junior Lien Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond or Junior Lien Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any Bond or Junior Lien Bond shall be surrendered for transfer, the City shall execute and the transfer agent shall authenticate and deliver a new Bond or Junior Lien Bond, for like aggregate principal amount. The transfer agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The City shall not be required (i) to issue, register the transfer of or exchange any Bond or Junior Lien Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 2023 Bond contained in Section 16 of this Ordinance and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond or Junior Lien Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds or Junior Lien Bonds being redeemed in part. The City shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds or Junior Lien Bond, which shall at all times be open to inspection by the City; and upon presentation for such purpose the transfer agent shall under such reasonable regulations as it may prescribe transfer or cause to be transferred on the books Bonds or Junior Lien Bond as hereinbefore provided.

If any Bond or Junior Lien Bond shall become mutilated, the City, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond or Junior Lien Bond of like tenor in exchange and substitution for the mutilated Bond or Junior Lien Bond, upon surrender to the transfer agent of the mutilated Bond or Junior Lien Bond. If any Bond or Junior Lien Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the City, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond or Junior Lien Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond or Junior Lien Bond so lost, destroyed or stolen. If any such Bond or Junior Lien Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond or Junior Lien Bond the transfer agent may pay the same without surrender thereof.

Section 8. Payment of Series 2023 Bond; Security; Priority of Lien. Principal of and interest on the Series 2023 Bond shall be payable solely from the Net Revenues, and to secure such payment, there is hereby recognized the statutory lien upon the whole of the Net Revenues which shall be a second lien, subject only to the statutory first lien established with respect to the Senior Lien Bonds, to continue until payment in full of the principal of and interest on all Junior Lien Bonds payable from the Net Revenues, or, until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Junior Lien Bonds of a series then outstanding, principal and interest on such Junior Lien Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. The statutory lien on the Net Revenues created with respect to the Junior Lien Bonds (including the Series 2023 Bond) shall at all times be and remain subordinate and inferior to the pledge of Net Revenues and the statutory first lien thereon authorized to be granted to secure any Senior Lien Bonds hereafter issued.

Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentences, the statutory lien shall be terminated with respect to that series of Bonds or Junior Lien Bonds, the holders of that series shall have no further rights under this Ordinance except for payment from the deposited funds, and the Bonds or Junior Lien Bonds of that series shall no longer be considered to be outstanding under the Outstanding Ordinance or this Ordinance.

Section 9. Bondholders' Rights; Receiver. The holder or holders of the Bonds or Junior Lien Bonds representing in the aggregate not less than twenty percent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the City, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest on the Bonds or the Junior Lien Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the City and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the City more particularly set forth herein and in Act 94.

The holder or holders of the Bonds and the Junior Lien Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the Junior Lien Bonds and the security therefor.

Section 10. Management; Fiscal Year. The operation, repair and management of the System and the acquisition and construction of the Project shall be under the supervision and control of the City Commission. The City Commission, in accordance with the relevant provisions of the City Charter, may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The City Commission may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System. The fiscal year of the System shall be the fiscal year of the City.

Section 11. Rates and Charges. The rates and charges for service furnished by and the use of the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance.

Section 12. No Free Service or Use. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentality, including the City.

Section 13. Fixing and Revising Rates; Rate Covenant. The rates now in effect are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the System in good repair and working order, to provide for the payment of the principal of and interest on the Bonds and the Junior Lien Bonds as the same become due and payable, and the maintenance of the reserve therefor and to provide for all other obligations, expenditures and funds for the System required by law and this Ordinance. In addition, it is agreed that the rates shall be set from time to time so that there shall be produced each fiscal year Net Revenues in an amount not less than 110% of the principal of and interest on all Bonds coming due in each fiscal year and not less than 100% of the principal of and interest on all Junior Lien Bonds coming due in each fiscal year. The rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed to fix and maintain rates for services furnished by the System at all times sufficient to provide for the foregoing.

Section 14. Funds and Accounts; Flow of Funds. The funds and accounts established by the Outstanding Ordinances are hereby continued, the flow of funds established by the Outstanding Ordinances, is hereby continued, and the applicable sections of the Outstanding Ordinances, relating to funds and accounts and flow of funds are incorporated herein by reference as if fully set forth.

Section 15. Bond Proceeds. The proceeds of the sale of the Series 2023 Bond shall be deposited in a bank or banks, designated by the City, qualified to act as depository of the proceeds of sale under the provisions of Act 94, in an account designated 2023 WATER SUPPLY SYSTEM PROJECT CONSTRUCTION FUND (the "Construction Fund"). Moneys in the Construction Fund shall be applied solely in payment of the cost of the Project, including any engineering, legal and other expenses incident thereto and to the financing thereof.

Section 16. Bond Form. The Series 2023 Bond shall be in substantially the following form with such changes or completion as necessary or appropriate to give effect to the intent of this Ordinance and further subject to such modifications which may be required by the Michigan Attorney General and the Authority and approved by bond counsel:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MUSKEGON

CITY OF MUSKEGON

WATER SUPPLY SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2023

REGISTERED OWNER:	Michigan Finance Authority
PRINCIPAL AMOUNT:	__________________ Dollars ($__________)
DATE OF ORIGINAL ISSUE:	September 20, 2023

The CITY OF MUSKEGON, County of Muskegon, State of Michigan (the "City"), for value received, hereby promises to pay, but only out of the hereinafter described Net Revenues of the City's Water Supply System (hereinafter defined), to the Michigan Finance Authority (the "Authority"), or registered assigns, the Principal Amount shown above, or such portion thereof as shall have been advanced to the City pursuant to a Purchase Contract between the City and the Authority and a Supplemental Agreement by and among the City, the Authority and the State of Michigan acting through the Department of Environment, Great Lakes, and Energy, in lawful money of the United States of America, unless prepaid or reduced prior thereto as hereinafter provided.

During the time funds are being drawn down by the City under this Bond, the Authority will periodically provide the City a statement showing the amount of principal that has been advanced and the date of each advance, which statement shall constitute prima facie evidence of the reported information; provided that no failure on the part of the Authority to provide such a statement or to reflect a disbursement or the correct amount of a disbursement shall relieve the City of its obligation to repay the outstanding principal amount actually advanced, all accrued interest thereon, and any other amount payable with respect thereto in accordance with the terms of this Bond.

The Principal Amount shall be payable on the dates and in the annual principal installment amounts set forth on Schedule A attached hereto and made a part hereof, as such Schedule may be adjusted if less than $________ is disbursed to the City or if a portion of the Principal Amount is prepaid as provided below, with interest on the principal installments from the date each installment is delivered to the holder hereof until paid at the rate of one and seven-eighths percent (1.875%) per annum. Interest is first payable April 1, 2024 and semiannually thereafter and principal is payable on the first day of October commencing October 1, 2025 (as identified in the Purchase Contract) and annually thereafter.

Principal installments of this bond are subject to prepayment by the City prior to maturity only with the prior written consent of the Authority and on such terms as may be required by the Authority.

Notwithstanding any other provision of this bond, so long as the Authority is the owner of this bond, (a) this bond is payable as to principal, premium, if any, and interest at U.S. Bank Trust Company, National Association or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository"); (b) the City agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; in the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment; and (c) written notice of any redemption of this bond shall be given by the City and received by the Authority's Depository at least 40 days prior to the date on which such redemption is to be made.

Additional Interest

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this bond but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the Authority has been fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the City's default. Such additional interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority) the investment of amounts in the reserve account established by the Authority for the bonds of the Authority issued to provide funds to purchase this bond fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the City shall and hereby agrees to pay on demand only the City's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.

For prompt payment of principal and interest on this bond, the City has irrevocably pledged the revenues of the Water Supply System of the City, including all appurtenances, extensions and improvements thereto (the "System"), after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), and a statutory second lien thereon is hereby recognized and created, subject to the senior lien of any additional Bonds of the City hereafter issued by the City, as set forth in the Ordinance (hereinafter defined). The bonds of this issue are of equal standing and priority of lien as to the Net Revenues with the City's Water Supply System Revenue Bonds (Limited Tax General Obligation), Series 2004, the City's Water Supply System Junior Lien Revenue Bonds, Series 2019, the City's Water Supply System Junior Lien Revenue Bonds, Series 2020, the City's Water Supply System Junior Lien Revenue Bonds, Series 2023A and the City's Water Supply System Junior Lien Revenue Bonds, Series 2023B (together, the "Outstanding Junior Lien Bonds") and any additional bonds hereafter issued by the City of equal standing and priority with the Outstanding Junior Lien Bonds. The City has reserved the right to issue such additional Bonds which shall be superior and senior in all respects to the bonds of this issue as to the Net Revenues, or of equal standing and priority of lien as to the Net Revenues.

Purchasers of the bonds of this issue, by their acceptance of the bonds of this issue or a beneficial ownership interest therein, shall be deemed to have consented to the subordination of their interest in and lien upon the Net Revenues upon the issuance of senior lien bonds subsequent to the delivery of the bonds of this issue.

This bond is a single, fully-registered, non-convertible bond in the principal sum indicated above issued pursuant to Ordinance No. ___, duly adopted by the City Commission of the City and the prior ordinances authorizing the issuance of the Outstanding Junior Lien Bonds (together, the "Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying part of the cost of acquiring and constructing additions, extensions and improvements to the System.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of superior and equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the above-described Ordinances.

This bond is a self-liquidating bond, payable, both as to principal and interest, solely and only from the Net Revenues of the System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

The City has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of the bonds of this issue, any additional Bonds, and any additional Junior Lien Bonds, as and when the same shall become due and payable, and to maintain a bond redemption fund (including a bond reserve account, if any) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinances.

This bond is transferable only upon the books of the City by the registered owner in person or the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the transfer agent, duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the Ordinances, and upon payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the City of Muskegon, County of Muskegon, State of Michigan, by its City Commission has caused this bond to be executed with the manual or facsimile signatures of its Mayor and its City Clerk and the corporate seal of the City to be impressed or imprinted hereon, all as of the Date of Original Issue.

CITY OF MUSKEGON

By___________________________________
Mayor

(Seal)

Countersigned:

By______________________________
City Clerk

EGLE Project Number: 7467-01
EGLE Approved Amt: $__________

SCHEDULE A

Based on the schedule provided below unless revised as provided in this paragraph, repayment of the principal of the bond shall be made until the full amount advanced to the City is repaid. In the event the Order of Approval issued by the Department of Environment, Great Lakes and Energy (the "Order"), approves a principal amount of assistance less than the amount of the bond delivered to the Authority, the Authority shall only disburse principal up to the amount stated in the Order. In the event (1) that the payment schedule approved by the City and described below provides for payment of a total principal amount greater than the amount of assistance approved by the Order or (2) that less than the principal amount of assistance approved by the Order is disbursed to the City by the Authority, or (3) that any portion of the principal amount of assistance approved by the Order and disbursed to the City is forgiven pursuant to the Order, the Authority shall prepare a new payment schedule which shall be effective upon receipt by the City.

Maturity Date	Principal Amount
October 1, 2025	
October 1, 2026	
October 1, 2027	
October 1, 2028	
October 1, 2029	
October 1, 2030	
October 1, 2031	
October 1, 2032	
October 1, 2033	
October 1, 2034	
October 1, 2035	
October 1, 2036	
October 1, 2037	
October 1, 2038	
October 1, 2039	
October 1, 2040	
October 1, 2041	
October 1, 2042	
October 1, 2043	
October 1, 2044	

Interest on the bond shall accrue on that portion of principal disbursed by the Authority to the City which has not been forgiven pursuant to the Order from the date such portion is disbursed, until paid, at the rate of 1.875% per annum, payable April 1, 2024, and semi-annually thereafter.

The City agrees that it will deposit with the Authority's Depository, or such other place as shall be designated in writing to the City by the Authority payments of the principal of, premium, if any, and interest on this bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise. In the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment.

Section 17. Negotiated Sale; Application to EGLE and Authority; Execution of Documents. The City determines that it is in the best interest of the City to negotiate the sale of the Series 2023 Bond to the Authority because the Drinking Water State Revolving Fund financing programs provide significant interest savings to the City compared to competitive sale in the municipal bond market and principal forgiveness. The Authorized Officers are hereby authorized to make application to the Authority and to the EGLE for placement of the Series 2023 Bond with the Authority. The actions taken by the Authorized Officers with respect to the Series 2023 Bond prior to the adoption of this Ordinance are ratified and confirmed. The Authorized Officers are authorized to execute and deliver the Purchase Contract, the Supplemental Agreement and the Issuer's Certificate. Any Authorized Officer is further authorized to execute and deliver such contracts, documents and certificates as are necessary or advisable to qualify the Series 2023 Bond for the Drinking Water State Revolving Fund. Prior to the delivery of the Series 2023 Bond to the Authority, any Authorized Officer is hereby authorized to make such changes to the form of the Series 2023 Bond contained in Section 16 of this Ordinance as may be necessary to conform to the requirements of Act 227, Public Acts of Michigan 1985, as amended ("Act 227"), including, but not limited to changes in the principal maturity and interest payment dates and references to additional security required by Act 227.

Section 18. Covenant Regarding Tax Exempt Status of the Bonds. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Series 2023 Bond from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Series 2023 Bond proceeds and moneys deemed to be Bond proceeds.

Section 19. Approval of Bond Counsel. The representation of the City by Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), as bond counsel is hereby approved, notwithstanding the representation by Miller Canfield of the Authority in connection with its financing programs and borrowings.

Section 20. Approval of Bond Details. The Authorized Officers are each hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, provided that the principal amount of Series 2023 Bond issued shall not exceed the principal amount authorized in this Ordinance, the interest rate per annum on the Series 2023 Bond shall not exceed one and seven-eighths percent (1.875%) per annum, and the Series 2023 Bond shall mature in not more than twenty (20) annual installments.

Section 21. Savings Clause. All ordinances, resolutions or orders, or part thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, repealed.

Section 22. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 23. Publication and Recordation. This Ordinance shall be published in full in the *Muskegon Chronicle*, a newspaper of general circulation in the City qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the City and such recording authenticated by the signatures of the Mayor and the City Clerk.

Section 24. Effective Date. This Ordinance shall be effective upon its adoption and publication.

ADOPTED AND SIGNED THIS 25th day of July, 2023.

Signed_____________________________________
Mayor

Signed_____________________________________
City Clerk

I HEREBY CERTIFY that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan, at a regular meeting held on July 25, 2023, and that the meeting was conducted and public notice of the meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of the meeting were kept and will be or have been made available as required by the Act.

I further certify that the following Members were present at the meeting: ____ and that the following Members were absent: ____.

I further certify that Member _________________ moved for adoption of the Ordinance, and that the motion was supported by Member _________________.

I further certify that the following Members voted for adoption of the Ordinance: ____ and that the following Members voted against adoption of the Ordinance: _________________________________.

I further certify that the Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and the City Clerk.

____

City Clerk

40833819.1/063684.00058

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Sanitary Sewer Collection System Bonds
Submitted By: Kenneth D. Grant	Department: Finance

Brief Summary:

Ordinance authorizing the issuance of Sanitary Sewer Collection System Junior Lien Revenue Bonds

Detailed Summary & Background:

To authorize the issuance of Sanitary Sewer Collection System Bonds in an amount not to exceed $3,910,000. The Bonds are expected to be sold to the Michigan Finance Authority and payable in 20 annual principal installments at an interest rate of 1.875%. Scheduled closing is September 20th.

Estimated Principal Forgiveness is approximately $1,955,000

Goal/Focus Area/Action Item Addressed: Sustainability in financial practices and infrastructure. Reduce infrastructure burden on residents.

Amount Requested: (Per Meeting 7/11/23)	Budgeted Item: Yes ☒ No ☐
Fund(s) or Account(s): 590 (Sewer)	Budgeted Amendment Needed: Yes ☐ No ☒

Recommended Motion: I move approval of the ordinance authorizing the issuance of Sanitary Sewer Collection System Revenue Bonds.

Approvals:	Legal Review ☒	Guest(s) Invited / Presenting
Immediate Division Head ☒	Information Technology ☐	Yes ☐
Other Division Heads ☒	Communication ☒	No ☒

Founded in 1852
by Sidney Davy Miller

PATRICK F. MCGOW
TEL (313) 496-7684
FAX (313) 496-8450
E-MAIL mcgow@millercanfield.com

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July 13, 2023

Mr. Ken Grant
Finance Director
City of Muskegon
933 Terrace Street
Muskegon MI 49443-0536

Re: City of Muskegon
$3,910,000 Sanitary Sewer System Junior Lien Revenue Bonds, Series 2023
(CWSRF Project 5790-01)
$8,865,000 Water Supply System Junior Lien Revenue Bonds, Series 2023
(DWSRF Project 7467-01)

Dear Ken:

I have enclosed an Ordinance authorizing the issuance of the above-captioned Sanitary Sewer System Revenue Bonds and an Ordinance authorizing the issuance of the above-captioned Water Supply System Revenue Bonds to be considered for approval by the City Commission at its meeting on July 25th. The Sewer Bonds and the Water Bonds are to be sold through the Michigan Finance Authority's ("MFA") Quarter 4B Clean Water State Revolving Fund Program and Drinking Water State Revolving Fund Program, respectively, scheduled to close on September 8th.

Sewer Bonds

The Sewer Bond Ordinance authorizes the issuance of the Bonds in an amount not to exceed $3,910,000 for the sewer projects. Of that amount, approximately $1,955,000 of the principal will be forgiven, leaving the amount of the loan to be repaid of $1,955,000. The Ordinance provides flexibility for the actual size of the Bond issue to be reduced prior to closing based on the actual construction bids and final approved costs. In addition, the City will receive principal forgiveness for this project which will reduce the amount that needs to be paid back to the MFA.

The Sewer Bond Ordinance authorizes the issuance of the Series 2023 Bonds, which are payable from the Net Revenues of the City's Sanitary Sewer System. The Bonds are expected to be sold to the MFA and payable in 20 annual principal installments at an interest rate of 1.875%. The Bonds are being issued as junior lien bonds which are of equal standing with the Series 2019

Bonds, Series 2020 Bonds and Series 2022 Bonds previously issued through the SRF for sewer improvements.

Water Bonds

The Water Bond Ordinance authorizes the issuance of the Bonds in an amount not to exceed $8,865,000, based on the numbers in the EGLE Project Cost Summary. These numbers are still being tweaked and do not include the reductions for the ARPA Grant and principal forgiveness, which is 75% of the project cost amount, leaving the amount of the loan to be repaid of $2,216,250. But because we don't have the breakdown between the ARPA Grant and principal forgiveness yet, we are including the full project amount even though the loan amount, and amount to be repaid, will be substantially less. Again, the Ordinance provides flexibility for the actual size of the Bond issue to be reduced prior to closing based on the actual construction bids and final approved costs. In addition, the City will receive principal forgiveness for these projects which will reduce the amount that needs to be paid back to the MFA.

The Water Bond Ordinance authorizes the issuance of the Series 2023 Bonds, which are payable from the Net Revenues of the City's Water Supply System. The Bonds are expected to be sold to the MFA and payable in 20 annual principal installments at an interest rate of 1.875%. The Bonds are being issued as junior lien bonds which are of equal standing with the Series 2004 Bonds, Series 2019 Bonds, Series 2020 Bonds, Series 2022A Bonds and Series 2022B Bonds previously issued through the DWRF for water improvements.

Both Water and Sewer Bonds

Both Ordinances also authorize various City officials to take the necessary actions to execute and deliver the Bonds and all related documents, approve the final size of the Bonds and contains the necessary items required by the Revenue Bond Act, Act 94 of 1933.

Pursuant to the Revenue Bond Act, the Ordinances may be adopted in one reading, regardless of any contrary provision in the City's ordinance adoption procedures. Each Ordinance is required to be published once in full in your local newspaper (*Muskegon Chronicle*) after its adoption. There are no restrictions or requirements on the size of the publication, so it can be as small as possible. Upon adoption by the City Commission, we would appreciate receiving three (3) certified copies of the Ordinance and three (3) Affidavits of Publication of the Ordinance for bond transcripts.

The Part III application with the construction bids and tentative contract approval was submitted last week, with the tentative contract approvals approved at the July 11th City Commission meeting. There will be a conference call with MFA, EGLE and City officials on July 31st at 1:40 p.m. which we will participate in, to make final arrangements relating to the Bond terms. At that time, the final bond sizes will be determined, and we will prepare the necessary documents to be signed by various City officials after that date regarding the sale and delivery of the Bonds. The EGLE Order of Approval is expected to be issued on August 29th. The closing for the Bonds will be September 20th and the City can begin requesting draws on the Bonds after that date.

If you or anyone copied have any questions, please do not hesitate to contact me.

Very truly yours,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: ______________________

Patrick F. McGow

Enclosure

cc: Jonathan Seyferth
LeighAnn Mikesell
Dan Vanderheide
Barbara Marczak
Warren Creamer
Stacey Mills

40833809.1/063684.00058

ORDINANCE NO. _____
CITY OF MUSKEGON

AN ORDINANCE TO PROVIDE FOR THE ACQUISITION, CONSTRUCTION, INSTALLATION, FURNISHING AND EQUIPPING OF ADDITIONS AND IMPROVEMENTS TO THE SANITARY SEWER SYSTEM OF THE CITY; TO PROVIDE FOR THE ISSUANCE AND SALE OF JUNIOR LIEN REVENUE BONDS TO PAY THE COST THEREOF; TO PROVIDE FOR THE COLLECTION OF REVENUES FROM THE SYSTEM SUFFICIENT FOR THE PURPOSE OF PAYING THE COSTS OF OPERATION AND MAINTENANCE OF THE SYSTEM AND TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AND CERTAIN OUTSTANDING BONDS OF THE SYSTEM; TO PROVIDE FOR THE SEGREGATION AND DISTRIBUTION OF SYSTEM REVENUES; TO PROVIDE FOR THE RIGHTS OF THE HOLDERS OF THE BONDS IN ENFORCEMENT THEREOF; TO PRESCRIBE THE FORM OF THE BONDS; AND TO PROVIDE FOR OTHER MATTERS RELATING TO THE BONDS AND THE SYSTEM.

THE CITY OF MUSKEGON ORDAINS:

Section 1. Definitions. Whenever used in this Ordinance, except when otherwise indicated by the context, the following terms shall have the following meanings:

(a) "Act 94" means Act 94, Public Acts of Michigan, 1933, as amended.

(b) "Adjusted Net Revenues" means for any operating year the excess of revenues over expenses for the System determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, interest expense on Bonds and payments to the City in lieu of taxes, to which may be made the following adjustments.

(i) Revenues may be augmented by the amount of any rate increases adopted prior to the issuance of additional Bonds or to be placed into effect before the time principal or interest on the additional Bonds becomes payable from Revenues as applied to quantities of service furnished during the operating year or portion thereof that the increased rates were not in effect.

(ii) Revenues may be augmented by amounts which may be derived from rates and charges to be paid by new customers of the System.

(c) "Authority" means the Michigan Finance Authority or its successor.

(d) "Authorized Officers" means the Mayor, the City Manager, the City Clerk and the Finance Director of the City.

(e) "Bonds" or "Senior Lien Bonds" means any bonds or series of bonds so designated and payable from Net Revenues, which are secured by a statutory first lien on the Net Revenues established by this Ordinance and which are senior and superior in all respects with respect to the Net Revenues to any Junior Lien Bonds secured by the statutory second lien on the Net Revenues, together with any additional Bonds of equal standing thereafter issued.

(f) "City" or "Issuer" means the City of Muskegon, County of Muskegon, State of Michigan.

(g) "EGLE" means the means the Michigan Department of Environment, Great Lakes, and Energy, or its successor.

(h) "Engineers" means Prein & Newhof, registered engineers of Grand Rapids, Michigan.

(i) "Junior Lien Bonds" means Series 2023 Bond, the Outstanding Junior Lien Bonds and any additional bonds of equal standing with the Series 2023 Bond and the Outstanding Junior Lien Bonds which are secured by a statutory second lien on the Net Revenues and are junior and subordinate to the Senior Lien Bonds.

(j) "Outstanding Junior Lien Bonds" means the Series 2019 Bond, the Series 2020 Bond and the Series 2022 Bond.

(k) "Outstanding Ordinances" means Ordinance Nos. 2417, 2437 and 2469 of the City.

(l) "Project" means the acquisition, construction, furnishing and equipping of improvements to the Sanitary Sewer System of the City, including sewer system rehabilitation and replacement of existing sewer lines, together with pump station improvements and all related appurtenances and attachments.

(m) "Purchase Contract" means the Purchase Contract to be entered into between the Authority and the City relating to the purchase by the Authority of the Series 2023 Bond.

(n) "Revenues" and "Net Revenues" shall mean the revenues and net revenues of the City derived from the operation of the System and shall be construed as defined in Section 3 of Act 94, including with respect to "Revenues," the earnings derived from the investment of moneys in the various funds and accounts established by this Ordinance.

(o) "Series 2019 Bond" means the Sanitary Sewer System Junior Lien Revenue Bond, Series 2019, dated August 28, 2019, in the outstanding principal amount of Two Million Six Hundred Thirty-Five Thousand Dollars ($2,635,000).

(p) "Series 2020 Bond" means the Sanitary Sewer System Junior Lien Revenue Bond, Series 2019, dated September 30, 2020, in the outstanding principal amount of Three Million Four Hundred Sixty Thousand Dollars ($3,465,000).

(q) "Series 2022 Bond" means the Sanitary Sewer System Junior Lien Revenue Bond, Series 2019, dated September 20, 2022, in the outstanding principal amount of Two Million Eight Hundred Twenty-Eight Thousand Dollars ($2,828,000).

(r) "Series 2023 Bond" means the Sanitary Sewer System Junior Lien Revenue Bond, Series 2023, of the City in the principal amount of not to exceed Three Million Nine Hundred Ten Thousand Dollars ($3,910,000) authorized by this Ordinance.

(s) "Sufficient Government Obligations" means direct obligations of the United States of America or obligations the principal and interest on which is fully guaranteed by the United States of America, not redeemable at the option of the issuer, the principal and interest payments upon which without reinvestment of the interest, come due at such times and in such amounts as to be fully sufficient to pay the interest as it comes due on the Bonds or Junior Lien Bonds and the principal and redemption premium, if any, on the Bonds or Junior Lien Bonds as it comes due whether on the stated maturity date or upon earlier redemption. Securities representing such obligations shall be placed in trust with a bank or trust company, and if any of the Bonds or Junior Lien Bonds are to be called for redemption prior to maturity, irrevocable instructions to call the Bonds for redemption shall be given to the paying agent.

(t) "Supplemental Agreement" means the supplemental agreement among the City, the Authority and the EGLE relating to the Series 2023 Bond.

(u) "System" means the Sanitary Sewer System of the City, including the Project and all additions, extensions and improvements hereafter acquired.

Section 2. Necessity; Approval of Plans and Specifications. It is hereby determined to be a necessary public purpose of the City to acquire and construct the Project in accordance with the plans and specifications prepared by the Engineers, which plans and specifications are hereby approved. The Project qualifies for the Clean Water State Revolving Fund financing program being administered by the EGLE and the Authority, whereby bonds of the City are sold to the Authority and bear interest at a fixed rate of not to exceed one and seven-eighths percent (1.875%) per annum.

Section 3. Costs; Useful Life. The cost of the Project is estimated to be an amount not to exceed Three Million Nine Hundred Ten Thousand Dollars ($3,910,000), including the payment of incidental expenses as specified in Section 4 of this Ordinance, which estimate of cost is hereby approved and confirmed. The period of usefulness of the Project is estimated to be not less than twenty-five (25) years.

Section 4. Payment of Cost; Bonds Authorized. To pay part of the cost of acquiring the Project, legal, engineering, financial and other expenses incident thereto and incident to the issuance and sale of the Series 2023 Bond, the City shall borrow the sum of not to exceed Three Million Nine Hundred Ten Thousand Dollars ($3,910,000), and issue the Series 2023 Bond therefor pursuant to the provisions of Act 94. The remaining cost of the Project, if any, shall be defrayed from grant funds and City funds on hand and legally available for such use.

Except as amended by or expressly provided to the contrary in this Ordinance, all of the provisions of the Outstanding Ordinances shall apply to the Series 2023 Bonds issued pursuant to this Ordinance, the same as though each of the provisions were repeated in this Ordinance in detail; the purpose of this Ordinance being to authorize the issuance of additional revenue bonds of junior and subordinate standing and priority of lien to any Outstanding Senior Lien Bonds and of equal standing and priority of lien as to the Net Revenues with the Outstanding Junior Lien Bonds to finance the cost of acquiring additions, extensions and improvements to the System, additional bonds of junior and subordinate standing and priority of lien as to the Outstanding Senior Lien Bonds and of equal standing and priority of lien as to the Outstanding Junior Lien Bonds for such purpose being authorized by the provisions of the Outstanding Ordinances, upon the conditions therein stated, which conditions have been fully met.

Section 5. Issuance of Series 2023 Bond; Details. The Series 2023 Bond of the City, to be designated SANITARY SEWER SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2023 is authorized to be issued in the aggregate principal sum of not to exceed Three Million Nine Hundred Ten Thousand Dollars ($3,910,000) or such lesser amount as finally determined by order of the EGLE for the purpose of paying part of the cost of the Project, including the costs incidental to the issuance, sale and delivery of the Series 2023 Bond. The Series 2023 Bond shall be payable out of the Net Revenues, as set forth more fully in Section 8 hereof.

The Series 2023 Bond shall be in the form of a single fully-registered, nonconvertible bond of the denomination of the full principal amount thereof, dated as of the date of delivery, payable in principal installments as finally determined by the order of the EGLE at the time of sale of the Series 2023 Bond and approved by the Authority and an Authorized Officer. Principal installments of the Series 2023 Bond shall be payable on October 1 of the years 2025 through 2044, inclusive, or such other payment dates as hereinafter provided. Interest on the Series 2023 Bond shall be payable on April 1 and October 1 of each year, commencing April 1, 2024 or on such other interest payment dates as hereinafter provided. Final determination of the principal amount of and interest on the Series 2023 Bond and the payment dates and amounts of principal installments of the Series 2023 Bond shall be evidenced by execution of the Purchase Contract and each of the Authorized Officers is authorized and directed to execute and deliver the Purchase Contract when in final form and to make the determinations set forth above; provided, however, that the first principal installment shall be due no earlier than April 1, 2024 and the final principal installment shall be due no later than October 1, 2046 and that the total principal amount shall not exceed $3,910,000.

The Series 2023 Bond shall bear interest at a rate of not to exceed one and seven-eighths percent (1.875%) per annum on the par value thereof or such other rate as evidenced by execution of the Purchase Contract, but in any event not to exceed the rate permitted by law, and any Authorized Officers as shall be appropriate shall deliver the Series 2023 Bond in accordance with the delivery instructions of the Authority.

The principal amount of the Series 2023 Bond is expected to be drawn down by the City periodically, and interest on principal amount shall accrue from the date such principal amount is drawn down by the City.

The Series 2023 Bond shall not be convertible or exchangeable into more than one fully-registered bond. Principal of and interest on the Series 2023 Bond shall be payable as provided in the Series 2023 Bond form in this Ordinance.

The Series 2023 Bond shall be subject to optional redemption by the City with the prior written approval of the Authority and on such terms as may be required by the Authority.

The Treasurer shall record on the registration books payment by the City of each installment of principal or interest or both when made and the cancelled checks or other records evidencing such payments shall be returned to and retained by the Treasurer.

Upon payment by the City of all outstanding principal of and interest on the Series 2023 Bond, the Authority shall deliver the Series 2023 Bond to the City for cancellation.

Section 6. Execution of Series 2023 Bond. The Series 2023 Bond shall be signed by the manual or facsimile signature of the Mayor and countersigned by the manual or facsimile signature of the City Clerk and shall have the corporate seal of the City or facsimile thereof impressed thereon. The Series 2023 Bond bearing the manual or facsimile signatures of the Mayor and the City Clerk sold to the Authority shall require no further authentication.

Section 7. Registration and Transfer. Any Bond or Junior Lien Bond may be transferred upon the books required to be kept pursuant to this section by the person in whose name it is registered, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond or Junior Lien Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the transfer agent. Whenever any Bond or Junior Lien Bond shall be surrendered for transfer, the City shall execute and the transfer agent shall authenticate and deliver a new Bond or Junior Lien Bond, for like aggregate principal amount. The transfer agent shall require payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer. The City shall not be required (i) to issue, register the transfer of or exchange any Bond or Junior Lien Bond during a period beginning at the opening of business 15 days before the day of the giving of a notice of redemption of Bonds selected for redemption as described in the form of Series 2023 Bond contained in Section 16 of this Ordinance and ending at the close of business on the day of that giving of notice, or (ii) to register the transfer of or exchange any Bond or Junior Lien Bond so selected for redemption in whole or in part, except the unredeemed portion of Bonds or Junior Lien Bonds being redeemed in part. The City shall give the transfer agent notice of call for redemption at least 20 days prior to the date notice of redemption is to be given.

The transfer agent shall keep or cause to be kept at its principal office sufficient books for the registration and transfer of the Bonds or Junior Lien Bond, which shall at all times be open to inspection by the City; and upon presentation for such purpose the transfer agent shall under such reasonable regulations as it may prescribe transfer or cause to be transferred on the books Bonds or Junior Lien Bond as hereinbefore provided.

If any Bond or Junior Lien Bond shall become mutilated, the City, at the expense of the holder of the Bond, shall execute, and the transfer agent shall authenticate and deliver, a new Bond or Junior Lien Bond of like tenor in exchange and substitution for the mutilated Bond or Junior

Lien Bond, upon surrender to the transfer agent of the mutilated Bond or Junior Lien Bond. If any Bond or Junior Lien Bond issued under this Ordinance shall be lost, destroyed or stolen, evidence of the loss, destruction or theft may be submitted to the transfer agent and, if this evidence is satisfactory to both and indemnity satisfactory to the transfer agent shall be given, and if all requirements of any applicable law including Act 354, Public Acts of Michigan, 1972, as amended ("Act 354"), being sections 129.131 to 129.135, inclusive, of the Michigan Compiled Laws have been met, the City, at the expense of the owner, shall execute, and the transfer agent shall thereupon authenticate and deliver, a new Bond or Junior Lien Bond of like tenor and bearing the statement required by Act 354, or any applicable law hereafter enacted, in lieu of and in substitution for the Bond or Junior Lien Bond so lost, destroyed or stolen. If any such Bond or Junior Lien Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond or Junior Lien Bond the transfer agent may pay the same without surrender thereof.

Section 8. Payment of Series 2023 Bond; Security; Priority of Lien. Principal of and interest on the Series 2023 Bond shall be payable solely from the Net Revenues, and to secure such payment, there is hereby recognized the statutory lien upon the whole of the Net Revenues which shall be a second lien, subject only to the statutory first lien established with respect to the Senior Lien Bonds, to continue until payment in full of the principal of and interest on all Junior Lien Bonds payable from the Net Revenues, or, until sufficient cash or Sufficient Government Obligations have been deposited in trust for payment in full of all Junior Lien Bonds of a series then outstanding, principal and interest on such Junior Lien Bonds to maturity, or, if called for redemption, to the date fixed for redemption together with the amount of the redemption premium, if any. The statutory lien on the Net Revenues created with respect to the Junior Lien Bonds (including the Series 2023 Bond) shall at all times be and remain subordinate and inferior to the pledge of Net Revenues and the statutory first lien thereon authorized to be granted to secure any Senior Lien Bonds hereafter issued.

Upon deposit of cash or Sufficient Government Obligations, as provided in the previous sentences, the statutory lien shall be terminated with respect to that series of Bonds or Junior Lien Bonds, the holders of that series shall have no further rights under this Ordinance except for payment from the deposited funds, and the Bonds or Junior Lien Bonds of that series shall no longer be considered to be outstanding under this Ordinance.

Section 9. Bondholders' Rights; Receiver. The holder or holders of the Bonds or Junior Lien Bonds representing in the aggregate not less than twenty percent (20%) of the entire principal amount thereof then outstanding, may, by suit, action, mandamus or other proceedings, protect and enforce the statutory lien upon the Net Revenues of the System, and may, by suit, action, mandamus or other proceedings, enforce and compel performance of all duties of the officers of the City, including the fixing of sufficient rates, the collection of Revenues, the proper segregation of the Revenues of the System and the proper application thereof. The statutory lien upon the Net Revenues, however, shall not be construed as to compel the sale of the System or any part thereof.

If there is a default in the payment of the principal of or interest on the Bonds or the Junior Lien Bonds, any court having jurisdiction in any proper action may appoint a receiver to administer and operate the System on behalf of the City and under the direction of the court, and by and with the approval of the court to perform all of the duties of the officers of the City more particularly set forth herein and in Act 94.

The holder or holders of the Bonds and the Junior Lien Bonds shall have all other rights and remedies given by Act 94 and law, for the payment and enforcement of the Bonds and the Junior Lien Bonds and the security therefor.

Section 10. Management; Fiscal Year. The operation, repair and management of the System and the acquisition and construction of the Project shall be under the supervision and control of the City Commission. The City Commission, in accordance with the relevant provisions of the City Charter, may employ such person or persons in such capacity or capacities as it deems advisable to carry on the efficient management and operation of the System. The City Commission may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of the System. The fiscal year of the System shall be the fiscal year of the City.

Section 11. Rates and Charges. The rates and charges for service furnished by and the use of the System and the methods of collection and enforcement of the collection of the rates shall be those in effect on the date of adoption of this Ordinance.

Section 12. No Free Service or Use. No free service or use of the System, or service or use of the System at less than cost, shall be furnished by the System to any person, firm or corporation, public or private, or to any public agency or instrumentality, including the City.

Section 13. Fixing and Revising Rates; Rate Covenant. The rates now in effect are estimated to be sufficient to provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the System in good repair and working order, to provide for the payment of the principal of and interest on the Bonds and the Junior Lien Bonds as the same become due and payable, and the maintenance of the reserve therefor and to provide for all other obligations, expenditures and funds for the System required by law and this Ordinance. In addition, it is agreed that the rates shall be set from time to time so that there shall be produced each fiscal year Net Revenues in an amount not less than 110% of the principal of and interest on all Bonds coming due in each fiscal year and not less than 100% of the principal of and interest on all Junior Lien Bonds coming due in each fiscal year. The rates shall be fixed and revised from time to time as may be necessary to produce these amounts, and it is hereby covenanted and agreed to fix and maintain rates for services furnished by the System at all times sufficient to provide for the foregoing.

Section 14. Funds and Accounts; Flow of Funds. The funds and accounts established by the Outstanding Ordinances are hereby continued, the flow of funds established by the Outstanding Ordinances, is hereby continued, and the applicable sections of the Outstanding Ordinances, relating to funds and accounts and flow of funds are incorporated herein by reference as if fully set forth.

Section 15. Bond Proceeds. The proceeds of the sale of the Series 2023 Bond shall be deposited in a bank or banks, designated by the City, qualified to act as depository of the proceeds of sale under the provisions of Act 94, in an account designated 2023 SANITARY SEWER SYSTEM PROJECT CONSTRUCTION FUND (the "Construction Fund"). Moneys in the Construction Fund shall be applied solely in payment of the cost of the Project, including any engineering, legal and other expenses incident thereto and to the financing thereof.

Section 16. Bond Form. The Series 2023 Bond shall be in substantially the following form with such changes or completion as necessary or appropriate to give effect to the intent of this Ordinance and further subject to such modifications which may be required by the Michigan Attorney General and the Authority and approved by bond counsel:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF MUSKEGON

CITY OF MUSKEGON

SANITARY SEWER SYSTEM JUNIOR LIEN REVENUE BOND, SERIES 2023

REGISTERED OWNER: Michigan Finance Authority

PRINCIPAL AMOUNT: ___________________ Dollars ($__________)

DATE OF ORIGINAL ISSUE: September 20, 2023

The CITY OF MUSKEGON, County of Muskegon, State of Michigan (the "City"), for value received, hereby promises to pay, but only out of the hereinafter described Net Revenues of the City's Sanitary Sewer System (hereinafter defined), to the Michigan Finance Authority (the "Authority"), or registered assigns, the Principal Amount shown above, or such portion thereof as shall have been advanced to the City pursuant to a Purchase Contract between the City and the Authority and a Supplemental Agreement by and among the City, the Authority and the State of Michigan acting through the Department of Environmental Quality, in lawful money of the United States of America, unless prepaid or reduced prior thereto as hereinafter provided.

During the time funds are being drawn down by the City under this Bond, the Authority will periodically provide the City a statement showing the amount of principal that has been advanced and the date of each advance, which statement shall constitute prima facie evidence of the reported information; provided that no failure on the part of the Authority to provide such a statement or to reflect a disbursement or the correct amount of a disbursement shall relieve the City of its obligation to repay the outstanding principal amount actually advanced, all accrued interest thereon, and any other amount payable with respect thereto in accordance with the terms of this Bond.

The Principal Amount shall be payable on the dates and in the annual principal installment amounts set forth on Schedule A attached hereto and made a part hereof, as such Schedule may be adjusted if less than $________ is disbursed to the City or if a portion of the Principal Amount is prepaid as provided below, with interest on the principal installments from the date each installment is delivered to the holder hereof until paid at the rate of one and seven-eighths percent (1.875%) per annum. Interest is first payable April 1, 2024 and semiannually thereafter and principal is payable on the first day of October commencing October 1, 2025 (as identified in the Purchase Contract) and annually thereafter.

Principal installments of this bond are subject to prepayment by the City prior to maturity only with the prior written consent of the Authority and on such terms as may be required by the Authority.

Notwithstanding any other provision of this bond, so long as the Authority is the owner of this bond, (a) this bond is payable as to principal, premium, if any, and interest at U.S. Bank Trust Company, National Association or at such other place as shall be designated in writing to the City by the Authority (the "Authority's Depository"); (b) the City agrees that it will deposit with the Authority's Depository payments of the principal of, premium, if any, and interest on this bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise; in the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment; and (c) written notice of any redemption of this bond shall be given by the City and received by the Authority's Depository at least 40 days prior to the date on which such redemption is to be made.

Additional Interest

In the event of a default in the payment of principal or interest hereon when due, whether at maturity, by redemption or otherwise, the amount of such default shall bear interest (the "additional interest") at a rate equal to the rate of interest which is two percent above the Authority's cost of providing funds (as determined by the Authority) to make payment on the bonds of the Authority issued to provide funds to purchase this bond but in no event in excess of the maximum rate of interest permitted by law. The additional interest shall continue to accrue until the Authority has been fully reimbursed for all costs incurred by the Authority (as determined by the Authority) as a consequence of the City's default. Such additional interest shall be payable on the interest payment date following demand of the Authority. In the event that (for reasons other than the default in the payment of any municipal obligation purchased by the Authority) the investment of amounts in the reserve account established by the Authority for the bonds of the Authority issued to provide funds to purchase this bond fails to provide sufficient available funds (together with any other funds which may be made available for such purpose) to pay the interest on outstanding bonds of the Authority issued to fund such account, the City shall and hereby agrees to pay on demand only the City's pro rata share (as determined by the Authority) of such deficiency as additional interest on this bond.

For prompt payment of principal and interest on this bond, the City has irrevocably pledged the revenues of the Sanitary Sewer System of the City, including all appurtenances, extensions and improvements thereto (the "System"), after provision has been made for reasonable and necessary expenses of operation, maintenance and administration (the "Net Revenues"), and a statutory second lien thereon is hereby recognized and created, subject to the senior lien of any additional bonds of the City hereafter issued by the City, as set forth in the Ordinance (hereinafter defined). The bonds of this issue are of equal standing and priority of lien as to the Net Revenues with the City's Sanitary Sewer System Junior Lien Revenue Bonds, Series 2019, the City's Sanitary Sewer System Junior Lien Revenue Bonds, Series 2020 and the City's Sanitary Sewer System Junior Lien Revenue Bonds, Series 2022 (together, the "Outstanding Junior Lien Bonds") and any additional bonds hereafter issued by the City of equal standing and priority with the Outstanding Junior Lien Bonds. The City has reserved the right to issue such additional Bonds which shall be superior and senior in all respects to the bonds of this issue as to the Net Revenues, or of equal standing and priority of lien as to the Net Revenues.

Purchasers of the bonds of this issue, by their acceptance of the bonds of this issue or a beneficial ownership interest therein, shall be deemed to have consented to the subordination of their interest in and lien upon the Net Revenues upon the issuance of senior lien bonds subsequent to the delivery of the bonds of this issue.

This bond is a single, fully-registered, non-convertible bond in the principal sum indicated above issued pursuant to Ordinance No. ___ duly adopted by the City Commission of the City, and the prior ordinances authorizing the issuance of the Outstanding Junior Lien Bonds (together, the "Ordinances"), and under and in full compliance with the Constitution and statutes of the State of Michigan, including specifically Act 94, Public Acts of Michigan, 1933, as amended, for the purpose of paying part of the cost of acquiring and constructing additions, extensions and improvements to the System.

For a complete statement of the revenues from which and the conditions under which this bond is payable, a statement of the conditions under which additional bonds of superior and equal standing may hereafter be issued and the general covenants and provisions pursuant to which this bond is issued, reference is made to the above-described Ordinance.

This bond is a self-liquidating bond, payable, both as to principal and interest, solely and only from the Net Revenues of the System. The principal of and interest on this bond are secured by the statutory lien hereinbefore mentioned.

The City has covenanted and agreed, and does hereby covenant and agree, to fix and maintain at all times while any bonds payable from the Net Revenues of the System shall be outstanding, such rates for service furnished by the System as shall be sufficient to provide for payment of the interest upon and the principal of the bonds of this issue, any additional Bonds, and any additional Junior Lien Bonds, as and when the same shall become due and payable, and to maintain a bond redemption fund (including a bond reserve account, if any) therefor, to provide for the payment of expenses of administration and operation and such expenses for maintenance of the System as are necessary to preserve the same in good repair and working order, and to provide for such other expenditures and funds for the System as are required by the Ordinance.

This bond is transferable only upon the books of the City by the registered owner in person or the registered owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the transfer agent, duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the Ordinance, and upon payment of the charges, if any, therein prescribed.

It is hereby certified and recited that all acts, conditions and things required by law to be done precedent to and in the issuance of this bond have been done and performed in regular and due time and form as required by law.

IN WITNESS WHEREOF, the City of Muskegon, County of Muskegon, State of Michigan, by its City Commission has caused this bond to be executed with the manual or facsimile signatures of its Mayor and its City Clerk and the corporate seal of the City to be impressed or imprinted hereon, all as of the Date of Original Issue.

CITY OF MUSKEGON

By___________________________________
Mayor

(Seal)

Countersigned:

By______________________________
City Clerk

EGLE Project Number: 5790-01
EGLE Approved Amt: $____________

SCHEDULE A

Based on the schedule provided below unless revised as provided in this paragraph, repayment of the principal of the bond shall be made until the full amount advanced to the City is repaid. In the event the Order of Approval issued by the Department of Environment, Great Lakes and Energy (the "Order"), approves a principal amount of assistance less than the amount of the bond delivered to the Authority, the Authority shall only disburse principal up to the amount stated in the Order. In the event (1) that the payment schedule approved by the City and described below provides for payment of a total principal amount greater than the amount of assistance approved by the Order or (2) that less than the principal amount of assistance approved by the Order is disbursed to the City by the Authority, or (3) that any portion of the principal amount of assistance approved by the Order and disbursed to the City is forgiven pursuant to the Order, the Authority shall prepare a new payment schedule which shall be effective upon receipt by the City.

Maturity Date	Principal Amount
October 1, 2025	
October 1, 2026	
October 1, 2027	
October 1, 2028	
October 1, 2029	
October 1, 2030	
October 1, 2031	
October 1, 2032	
October 1, 2033	
October 1, 2034	
October 1, 2035	
October 1, 2036	
October 1, 2037	
October 1, 2038	
October 1, 2039	
October 1, 2040	
October 1, 2041	
October 1, 2042	
October 1, 2043	
October 1, 2044	

Interest on the bond shall accrue on that portion of principal disbursed by the Authority to the City which has not been forgiven pursuant to the Order from the date such portion is disbursed, until paid, at the rate of 1.875% per annum, payable April 1, 2024, and semi-annually thereafter.

The City agrees that it will deposit with the Authority's Depository, or such other place as shall be designated in writing to the City by the Authority payments of the principal of, premium, if any, and interest on this bond in immediately available funds by 12:00 noon at least five business days prior to the date on which any such payment is due whether by maturity, redemption or otherwise. In the event that the Authority's Depository has not received the City's deposit by 12:00 noon on the scheduled day, the City shall immediately pay to the Authority as invoiced by the Authority an amount to recover the Authority's administrative costs and lost investment earnings attributable to that late payment.

Section 17. Negotiated Sale; Application to EGLE and Authority; Execution of Documents. The City determines that it is in the best interest of the City to negotiate the sale of the Series 2023 Bond to the Authority because the Clean Water State Revolving Fund financing programs provide significant interest savings to the City compared to competitive sale in the municipal bond market and principal forgiveness. The Authorized Officers are hereby authorized to make application to the Authority and to the EGLE for placement of the Series 2023 Bond with the Authority. The actions taken by the Authorized Officers with respect to the Series 2023 Bond prior to the adoption of this Ordinance are ratified and confirmed. The Authorized Officers are authorized to execute and deliver the Purchase Contract, the Supplemental Agreement and the Issuer's Certificate. Any Authorized Officer is further authorized to execute and deliver such contracts, documents and certificates as are necessary or advisable to qualify the Series 2023 Bond for the Clean Water State Revolving Fund. Prior to the delivery of the Series 2023 Bond to the Authority, any Authorized Officer is hereby authorized to make such changes to the form of the Series 2023 Bond contained in Section 16 of this Ordinance as may be necessary to conform to the requirements of Act 227, Public Acts of Michigan 1985, as amended ("Act 227"), including, but not limited to changes in the principal maturity and interest payment dates and references to additional security required by Act 227.

Section 18. Covenant Regarding Tax Exempt Status of the Bonds. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Series 2023 Bond from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Series 2023 Bond proceeds and moneys deemed to be Bond proceeds.

Section 19. Approval of Bond Counsel. The representation of the City by Miller, Canfield, Paddock and Stone, P.L.C. ("Miller Canfield"), as bond counsel is hereby approved, notwithstanding the representation by Miller Canfield of the Authority in connection with its financing programs and borrowings.

Section 20. Approval of Bond Details. The Authorized Officers are each hereby authorized to adjust the final bond details set forth herein to the extent necessary or convenient to complete the transaction authorized herein, and in pursuance of the foregoing is authorized to exercise the authority and make the determinations authorized pursuant to Section 7a(1)(c) of Act 94, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment dates, redemption rights, the place of delivery and payment, and other matters, provided that the principal amount of Series 2023 Bond issued shall not exceed the principal amount authorized in this Ordinance, the interest rate per annum on the Series 2023 Bond shall not exceed one and seven-eighths percent (1.875%) per annum, and the Series 2023 Bond shall mature in not more than twenty (20) annual installments.

Section 21. Savings Clause. All ordinances, resolutions or orders, or part thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, repealed.

Section 22. Severability; Paragraph Headings; and Conflict. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance. The paragraph headings in this Ordinance are furnished for convenience of reference only and shall not be considered to be part of this Ordinance.

Section 23. Publication and Recordation. This Ordinance shall be published in full in the *Muskegon Chronicle*, a newspaper of general circulation in the City qualified under State law to publish legal notices, promptly after its adoption, and shall be recorded in the Ordinance Book of the City and such recording authenticated by the signatures of the Mayor and the City Clerk.

Section 24. Effective Date. This Ordinance shall be effective upon its adoption and publication.

ADOPTED AND SIGNED THIS 25th day of July, 2023.

Signed_____________________________________
Mayor

Signed_____________________________________
City Clerk

I HEREBY CERTIFY that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan, at a regular meeting held on July 25, 2023, and that the meeting was conducted and public notice of the meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976, and that the minutes of the meeting were kept and will be or have been made available as required by the Act.

I further certify that the following Members were present at the meeting: ____ and that the following Members were absent: ____.

I further certify that Member __________________ moved for adoption of the Ordinance, and that the motion was supported by Member __________________.

I further certify that the following Members voted for adoption of the Ordinance: ____ and that the following Members voted against adoption of the Ordinance: __________________________________.

I further certify that the Ordinance has been recorded in the Ordinance Book and that such recording has been authenticated by the signatures of the Mayor and the City Clerk.

____

City Clerk

40833828.1/063684.00059

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Update to Paid Parking Policy
Submitted By: LeighAnn Mikesell	Department: Manager's Office
Brief Summary: Staff is seeking approval of an amendment to the paid parking policy.	
Detailed Summary & Background: The Paid Parking Policy was approved in January 2021. At the request of the City Manager and Commissioners, the policy has been updated to allow 2 free passes per city residence. In addition to the property tax database, city utility bills can serve as proof of residency.	
Goal/Focus Area/Action Item Addressed: Improved access to the waterfront	
Amount Requested: N/A	Budgeted Item: Yes ☐ No ☐ N/A ■
Fund(s) or Account(s): N/A	Budget Amendment Needed: Yes ☐ No ☐ N/A ☐
Recommended Motion: to approve the amendment to the Paid Parking Policy.	
Approvals: Immediate Division Head ☐ Information Technology ☐ Other Division Heads ■ Communication ■ Legal Review ☐	Guest(s) Invited / Presenting: Yes ☐ No ■

PAID PARKING POLICY

JANUARY 2021

OVERVIEW:
The City of Muskegon instituted paid parking at all beaches in the summer of 2020 with the goal to offset intense maintenance costs at these extremely popular parks. Among the parks, maintenance includes beach and sand grading, pavement repair, trash clean up and removal, public restroom facilities, playgrounds, boardwalk repair, patrol, equipment costs, snow removal, and administration. Due to the popularity of the beaches, a large percentage of the overall Parks Department budget was spent on just five of the city's 34 parks. Over the years, other city parks have suffered because funding was inadequate to cover the maintenance, operational, and capital needs.

The kiosks used to collect payment at the beaches were also installed at the city's boat launches to provide a more convenient and accurate process for collecting fees. While the boating season is typically April through November, and the enforcement of payment at the city's launches matches that season, several launch sites and Harbour Towne beach are used heavily by ice fishers.

The City of Muskegon maintains this policy with the objectives of:

- increasing revenue for parks and launches,
- providing for improved amenities at parks and launches citywide,
- encouraging healthy outdoor activities,
- enhancing the city's image
- enhancing our ability to attract visitors, residents and businesses to our community

BEACH PARKING PASSES AND LAUNCH PERMITS:

<u>General</u>

All resident and seasonal beach parking passes and seasonal launch permits will be stickers which must be affixed to the vehicle's windshield.

Beach parking passes can be purchased in person at Treasury, Police Records, and Public Works or by calling Treasury.

Launch permits can be purchased in person at Treasury and Public Works or by calling Public Works.

Kiosk receipts can be traded for stickers at Treasury, Police Records, Public Works and participating vendors.

<u>Residents</u>

Two beach parking passes will be allowed per address.

The proof of residency process will be per the direction of the City Manager through an Administrative Directive to staff.

Non-residents

Daily and seasonal rates will be set in the fee schedule.

Discounted seasonal beach parking passes will be offered to neighboring communities who agree to purchase a minimum of 100 passes and share the cost of the discount. Muskegon will discount the beach parking pass price by 12.5% if the neighboring community further reduces the cost to their residents by another 12.5% resulting in a 25% discount for the neighbor.

ENFORCEMENT:

The city's goal is to reach compliance with the policy and ordinance. To that end, the following steps will be taken.

Beaches (except for Harbour Towne Beach)

- Kiosks will operate 24 hours per day.
- Paid parking will be enforced from 9:00 am to 9:00 pm.
- Signage will indicate payment is required only between the hours of 9:00 am and 9:00 pm and will indicate the daily and seasonal rates.
- Enforcement dates are May 15 to September 15.

Launches

- Kiosks will operate 24 hours per day.
- Paid parking will be enforced 24 hours per day.
- Signage will indicate the daily and seasonal rates.
- Enforcement dates are 365 days per year.
- Launch permits are valid until April 30 of the year following the calendar year on the permit.
- Launch permits are needed for any vehicle launching a watercraft and serve as parking passes for any vehicle at a launch.
- Beach parking permits can be used between December 15 and April 30 for parking only.
- Seasonal beach parking passes are valid until April 30 of the year following the calendar year on the pass.

Harbour Towne Beach

- Kiosks will operate 24 hours per day.
- Paid parking will be enforced from 9:00 am to 9:00 pm.
- Signage will indicate payment is required only between the hours of 9:00 am and 9:00 pm and will indicate the daily and seasonal rates.
- Enforcement dates are 365 days per year.
- Seasonal beach parking passes are valid until April 30 of the year following the calendar year on the pass.
- Launch permits can be used for vehicles parking between December 15 and April 30.

COMMUNICATION:

To ensure the public understands this policy, city staff will undertake the following communication measures.

- Develop a flyer for posting at local establishments
- Post on social media pages multiple times prior to and throughout the summer season
- Include flyers in water bills for resident communication
- Develop press release for Mlive
- Request story on WZZM
- Add signage at entrances to beaches and launches
- Include instructions with stickers
- Post messages on NIXLE
- Provide educational warnings to violators at the start of each beach and boating season

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Creation of a Redevelopment Area District
Submitted By: Mike Franzak	Department: Planning

Brief Summary: Request to approve the "Redevelopment Area District" pursuant to Public Act 501 of 2006, which will allow the issuance of liquor licenses under certain circumstances within the proposed "Redevelopment Area District."

Detailed Summary & Background:

Through Public Act 501 of 2006, the City already allows on-premises liquor license to businesses within the Downtown Development Authority (DDA) that meet certain criteria. These "DDA Licenses" are slightly different than the proposed "Redevelopment Area Licenses" proposed here. The "Redevelopment Area Licenses" do not have as much criteria to meet as the "DDA Licenses," most notably the requirement to have invested at least $75,000 in the property within the last five years.

The City must approve a "Redevelopment Area District," in which businesses may apply for these types of liquor licenses. Staff is proposing a district (see map) that is similar to the DDA boundaries, with only a slight removal of some residential houses at the southeast boundary of the district.

In order for the district to qualify, the following must be met:

- The area must have total investment over the last three years in real and personal property in the redevelopment area of: » At least $50 million in cities having a population of 50,000 or more, or at least $1 million per 1,000 people in cities of less than 50,000.
- The amount of commercial investment in the redevelopment project area shall constitute not less than 25 percent of the total investment in real and personal property as evidenced by an affidavit of the city assessor as certified by the city clerk (see enclosed).

In order to qualify for a license, the business must be located in a district and meet the following requirements:

- Be a business engaged in dining, entertainment or recreation;
- Be open to the general public at least 10 hours per day, five days per week;
- Have a seating capacity of at least 25 people;

The City currently charges $2,500 for the "DDA Licenses" and is proposing to charge the same for the "Redevelopment Area Licenses."

Goal/Focus Area/Action Item Addressed: Economic Development, Housing, and Business.

Amount Requested: N/A	Budgeted Item:

	Yes ☐ No ☐ N/A ■
Fund(s) or Account(s): N/A	Budget Amendment Needed: Yes ☐ No ☐ N/A ■
Recommended Motion: To approve the "redevelopment area district" pursuant to Public Act 501 of 2006.	
Approvals: Immediate Division Head ■ Information Technology ☐ Other Division Heads ■ Communication ☐ Legal Review ☐	Guest(s) Invited / Presenting: Yes ☐ No ■

City of Muskegon
Muskegon County, Michigan
Resolution No. __________

A resolution to establish the City of Muskegon Redevelopment Project Area ("District") enabling the use of Redevelopment On-premise Liquor Licenses.

The City Commission of the City of Muskegon hereby RESOLVES.

Recitals

1. Whereas, The City of Muskegon seeks opportunities to facilitate the expansion of the City's tax base, to retain and create jobs within the City, and to retain Muskegon businesses and enable their expansion; and

2. Whereas, The City of Muskegon understands and supports the value of small business development and the inherent need for such businesses to self-invest in order to grow and thrive; and,

3. Whereas, the Michigan Liquor Control Commission ("MLCC") has authorized the licensing of new, on-premises liquor licenses to businesses who are eligible with City approval under MCL 436.1521a(1)(a) (the "Statute") through the MLCC;

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

That in order to enhance the quality of life for the City's residents and to spur economic development through business investment, the City of Muskegon may issue such licenses to businesses who qualify, according to state statute MCL 436.1521a(1)a and according to the City's established policy, provided there is verified investment in the noted DISTRICT as certified by the City Assessor and as required by the noted statute (these licenses are hereinafter referred to as "RPA District Liquor Licenses", and that these RPA District Liquor Licenses shall be located in an area known as the "City Redevelopment Project Area" ("DISTRICT") defined by these boundaries and shown by map on Attachment A.

LET IT FURTHER BE RESOLVED:

That, for each application presented by a qualified business, it is incumbent upon the City, through its Assessor and as certified by its Clerk, to verify the amount of investment within the defined DISTRICT area over the previous three years which must be an amount equal to or greater than $1,000,000 per 1,000 residents in the City, as verified by the last certified Census; and, that the amount of commercial investment within that same period is not less than 25% of all investment in real and personal property within the DISTRICT.

The businesses which seek to apply for such an RPA District Liquor License will be compliant with all legislative and administrative requirements of the MLCC, including:

- The business shall document and certify that the business has been unable to secure a readily available quota liquor license or any other license in escrow within Muskegon County for use at their location;
- The licensed business must be engaged in activities related to dining, entertainment, or recreation and be open to the general public no less than ten (10) hours per day and five (5) days per week.
- The business will be located is the DISTRICT.

Adopted this 25th day of July, 2023.

Ayes: ______________________________

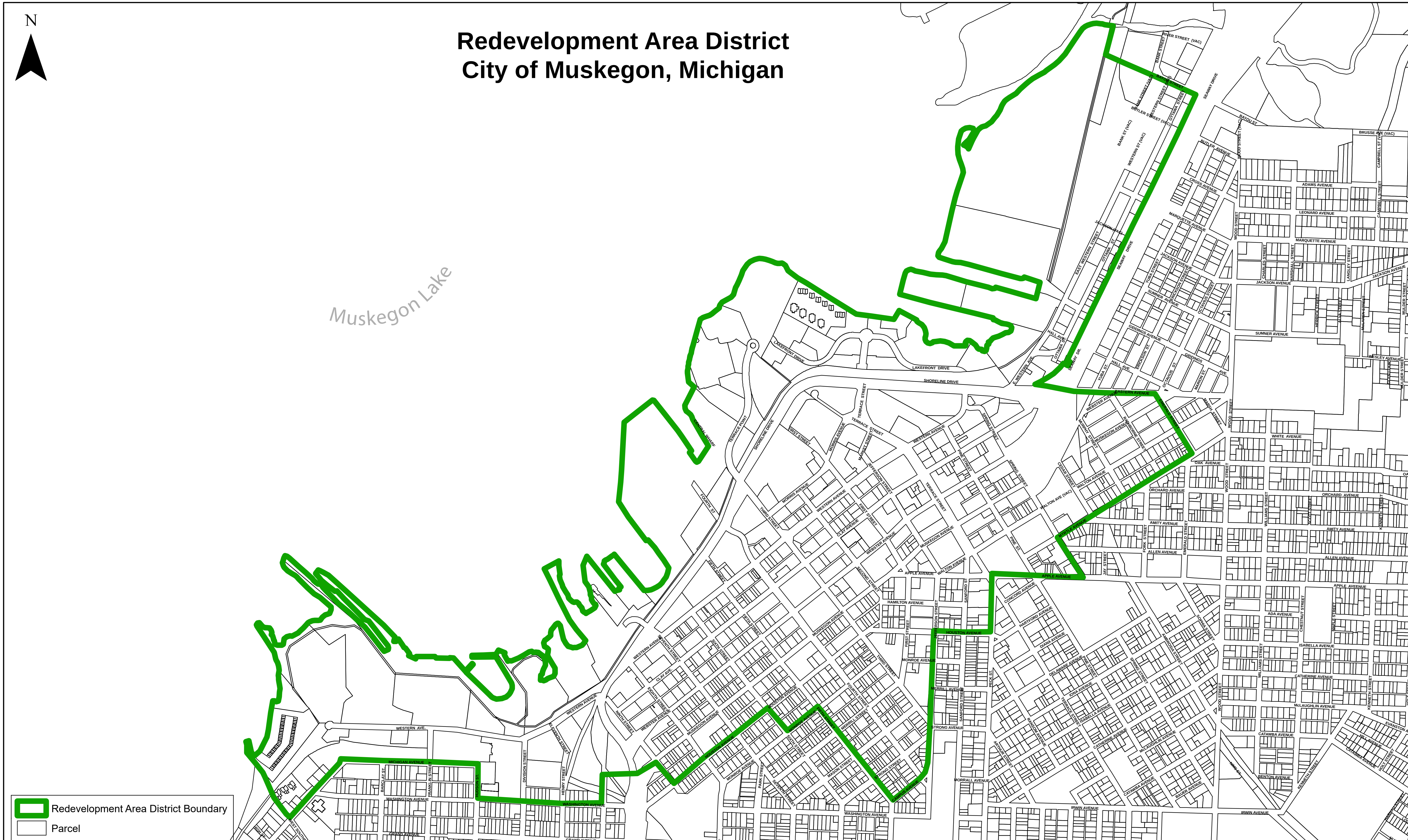
Nayes: ______________________________

Absent: ______________________________

By: ____________________
Ken Johnson
Its Mayor

By: ____________________
Ann Meisch, MMC
Its Clerk

Redevelopment Area District
City of Muskegon, Michigan



Affidavit of Public and Private Investment

I, Dan Vanderkooi, in my capacity as Deputy Assessor for the City of Muskegon, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440, being duly sworn, depose and say:

THAT I am familiar with and make this affidavit with regard to public and private investment in real and personal property within the qualified Redevelopment Area District in the City of; and

THAT, upon information and belief, attached Exhibit A reflects actual public and private investment in real and personal property within the Redevelopment Area District during the period beginning June 30, 2020 through June 30, 2023; and

THAT, the amount of commercial investment in the redevelopment project area constitutes not less than 25% of the total investment in real and personal property; and

THAT the foregoing is true to the best of my knowledge and belief.

Dated this 13th Day of July, 2023

Dan Vanderkooi, Deputy City Assessor
For the City of Muskegon, Michigan

STATE OF MICHIGAN
COUNTY OF MUSKEGON

Signed and sworn before me in Muskegon County, Michigan on July 13th, 2023, by Dan Vanderkooi, Deputy Assessor for the City of Muskegon, a municipal corporation.

JOEL M. SLEZAK
NOTARY PUBLIC - MICHIGAN
MUSKEGON COUNTY
MY COMMISSION EXPIRES 01/18/2026
ACTING IN MUSKEGON COUNTY

Joel M. Slezak
Notary Public
Acting in the County of Muskegon
Muskegon County, Michigan
My Commission Expires: 01/18/2026

EXHIBIT A - CITY OF MUSKEGON

DEVELOPMENT AREA DISTRICT - PUBLIC AND PRIVATE INVESTMENT

Parcel Number	Project	Address	Year	Investment
		Public Investment Total		**$ -**

Parcel Number	Project	Address	Year	Investment
24-205-355-0001-00	GenCap 1021 Jefferson LDH Apartments	1021 Jefferson St	2020-21	$ 11,000,000.00
24-233-000-0024-01	The Leonard Building	292 W Western Ave	2020-22	$ 8,000,000.00
24-205-556-0001-00	Hot Rod Harley	149 Shoreline Dr	2021-22	$ 200,000.00
24-205-177-0001-00	Samaritas	785 Spring St	2021-22	$ 7,350,000.00
24-205-315-0006-00	SociBowl	441 W Western Ave	2021-22	$ 775,000.00
24-205-330-0002-00	165 W Clay LLC	165 W Clay Ave	2022-23	$ 450,000.00
24-205-573-0001-00	Boys and Girls Club	900 W Western Ave	2022-23	$ 6,960,200.00
24-607-000-0016-00	Trilogy @ Harbor 31	40 Viridian Dr	2022-23	$ 19,300,000.00
24-205-315-0006-00	3M Investments	563 W Western Ave	2023-	$ 200,000.00
		Private Investment Total		**$ 54,235,200.00**
		Total Public/Private Investments		**$ 54,235,200.00**

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: July 25, 2023	Title: Issuance of a Redevelopment Area Liqor License at 350 W Western Ave.
Submitted By: Mike Franzak	Department: Planning

Brief Summary: Request to issue a Redevelopment Area Liquor License to 18th Amendment at 350 W Western Ave pursuant to Public Act 501 of 2006.

Detailed Summary & Background:

18th Amendment, located at 150 W Western would like to change their liquor license type from a distillery to a traditional liquor license. With none available, they have applied for a Redevelopment Area Liquor License through Public Act 501 of 2006. Please see the statement from the Assessors Department regarding the qualification of the investment levels in the Redevelopment Area.

Goal/Focus Area/Action Item Addressed: Economic Development, Housing, and Business.

Amount Requested: N/A	Budgeted Item: Yes ☐ No ☐ N/A ■
Fund(s) or Account(s): N/A	Budget Amendment Needed: Yes ☐ No ☐ N/A ■

Recommended Motion: To approve the Redevelopment Area Liquor License to 18th Amendment at 350 W. Western Avenue.

Approvals: Immediate Division Head ■ Information Technology ☐ Other Division Heads ■ Communication ☐ Legal Review ☐	Guest(s) Invited / Presenting: Yes ☐ No ■

City of Muskegon
Muskegon County, Michigan
Resolution No. __________

A resolution concerning the issuance of a Downtown Development Authority District On-Premise Liquor License pursuant to 436.1521a(1)(a) of the Michigan Compiled Laws at 350 W Western Ave.

The City Commission of the City of Muskegon hereby RESOLVES.

Recitals

1. 18th Amendment, LLC has applied for a Development District On-Premise Liquor License for the premises at 350 W Western Ave, Muskegon, Michigan 49440, which is located within an area established by the City Commission as a redevelopment project area pursuant to 436.1521a(1)(a) of the Michigan Compiled Laws.

2. It is required that the City Commission approve a specific applicant, at a specific location "ABOVE ALL OTHERS."

3. The property is located within the redevelopment area "DISTRICT."

4. This resolution was approved at the regular meeting of the City Commission on July 25, 2023.

City Commission Findings

The City Commission is satisfied that the licensed business shall be engaged in dining, entertainment or recreation, that is open to the general public, with a seating capacity of not less than 25 persons. They will be open to the general public at least 10 hours per day, five days per week.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

The City Commission deems it to be in the best interest of the City of Muskegon to approve the application of 18th Amendment, LLC for a new liquor license issued under MCL 436.1521a(1)(a) with applicable permits, to be located at 350 W Western Ave, Muskegon, Michigan 49440, and recommends to the Michigan Liquor Control Commission the issuance of said requested license to Shoreline Inn, LLC "ABOVE ALL OTHERS."

Adopted this 25th day of July, 2023.

Ayes: ____

Nayes: ____

Absent: ____

By: ____________________
Ken Johnson
Its Mayor

By: ____________________
Ann Meisch, MMC
Its Clerk