CITY OF MUSKEGON

CITY COMMISSION MEETING

JULY 23, 2013

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- **CALL TO ORDER:**
- **PRAYER:**
- **PLEDGE OF ALLEGIANCE:**
- **ROLL CALL:**
- **HONORS AND AWARDS:**
- **INTRODUCTIONS/PRESENTATION:**
- **CONSENT AGENDA:**

  A. **Approval of Minutes.** CITY CLERK

  B. **Human Resources Agreement.** CITY MANAGER

  C. **Special Event Request – Michigan Beach Polo.** PLANNING & ECONOMIC DEVELOPMENT

  D. **Special Event Request – Catamaran Racing Association of Michigan.** PLANNING & ECONOMIC DEVELOPMENT

  E. **Vacation of Temple Street south of Delano Avenue.** PLANNING & ECONOMIC DEVELOPMENT

  F. **Acceptance into the Redevelopment Ready Communities Program.** PLANNING & ECONOMIC DEVELOPMENT

- **PUBLIC HEARINGS:**
- **COMMUNICATIONS:**
- **CITY MANAGER'S REPORT:**
- **UNFINISHED BUSINESS:**
- **NEW BUSINESS:**

  A. **Fireworks Ordinance Amendment.** PUBLIC SAFETY

  B. **Special Event Request – Bassmasters Tournament Request to Sell Liquor.** PLANNING & ECONOMIC DEVELOPMENT

C. **Agreements with Harris Hospitality for Pere Marquette Park.** CITY MANAGER

- **ANY OTHER BUSINESS:**
- **PUBLIC PARTICIPATION:**

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

- **CLOSED SESSION:**
- **ADJOURNMENT:**

ADA POLICY: The City of Muskegon will provide necessary auxiliary aids and services to individuals who want to attend the meeting upon twenty four hour notice to the City of Muskegon. Please contact Ann Marie Cummings, City Clerk, 933 Terrace Street, Muskegon, MI 49440 or by calling (231) 724-6705 or TTY/TDD dial 7-1-1 to request a representative to dial (231) 724-6705.

Date: July 23, 2013

To: Honorable Mayor and City Commissioners

From: Ann Marie Cummings, City Clerk

RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the July 8th Commission Worksession Meeting, and the July 9th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon
City Commission Worksession
July 8, 2013
City Commission Chambers
5:30 PM

MINUTES

2013-56
Present: Commissioners Gawron, Spataro, Hood, German, Wierengo, Turnquist, and Markowski.
Absent: None.

CATV Franchise Agreement.
The City's 25-year cable TV franchise agreement with Comcast expires August 2, 2013. Legislation adopted in 2007 generally takes franchise negotiations out of local community's control and, instead, requires the use of a "Uniform Video Local Franchise Agreement." Comcast recently (June 20th) submitted a Uniform Franchise Agreement for the City's consideration. The City has 15 business days to respond as to the completeness of Comcast's Uniform Franchise application and 30 business days in which to approve the application.

The City of Detroit previously challenged the Uniform Franchise in federal court and that court has generally found in favor of Detroit. However, final resolution of the Detroit case is several months away.

Our legal counsel on this matter advises that it is in the City of Muskegon's interest to: 1) deny the Uniform Franchise as initially submitted by Comcast and delegate authority to negotiate with Comcast to the City Manager by adoption of the resolution and, 2) send the attached reply letter to Comcast.

This item will be on the July 9, 2013 meeting for consideration by the City Commission.

Closed Session
Motion by Commissioner German, seconded by Commissioner Hood to go into closed session to review applications for the City Manager position.

ROLL CALL VOTE:

Ayes: Markowski, Gawron, Hood, Spataro, German, Wierengo, and Turnquist.
Nays: None.

MOTION PASSES

Open Session
Motion by Vice Mayor Spataro, seconded by Commissioner Wierengo to go into open session.

ROLL CALL VOTE:

Ayes: Spataro, German, Wierengo, Turnquist, Markowski, Gawron, and Hood.
Nays: None.

MOTION PASSES

Adjournment.
Motion by Commissioner Hood, seconded by Vice Mayor Spataro to adjourn at 7:18 p.m.

MOTION PASSES

Ann Marie Cummings, MMC
City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

JULY 9, 2013

CITY COMMISSION CHAMBERS @ 5:30 P.M.

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, July 9, 2013.

Mayor Gawron opened the meeting with a prayer from Rev. Diane Stark from the Unity Church of Muskegon after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen Gawron, Vice Mayor Lawrence Spataro, Commissioners Lea Markowski, Eric Hood, Willie German, Sue Wierengo, and Byron Turnquist, City Manager Bryon Mazade, City Attorney John Schrier, and City Clerk Ann Marie Cummings.

2013-57 CONSENT AGENDA:

A. **Approval of Minutes.** CITY CLERK

SUMMARY OF REQUEST: To approve minutes of the June 25th City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. **"Development and Reimbursement Agreement" between the City of Muskegon Brownfield Redevelopment Authority (BRA) and Terrace Point Landing, LLC (Jon Rooks).** PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: The DDA Plan Amendment and Brownfield Redevelopment Plan Amendment and Resolution for Terrace Point Landing, LLC have been approved by the BRA, DDA and City Commission. The last document for approval is the "Development and Reimbursement Agreement" ("Agreement"). The Agreement outlines the tax capture and reimbursement process for the project.

FINANCIAL IMPACT: Future Brownfield Development (BRA) TIF capture will be directed to Mr. Rooks for reimbursement of loans he is securing for redevelopment of the property.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To endorse the approval by the BRA for the “Development and Reimbursement Agreement” between the City of Muskegon BRA and Terrace Point Landing, LLC.

COMMITTEE RECOMMENDATION: The BRA met on June 26, 2013, and approved the “Agreement”.

C. <u>Restrictive Covenant Declaration.</u> PUBLIC WORKS

SUMMARY OF REQUEST: Authorize the Mayor and Clerk to sign the declaration of restrictive covenant at the public service building, 1350 E. Keating and authorize Westshore Engineering to record said restriction.

FINANCIAL IMPACT: The cost of recording which is estimated to be less than $200.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize the Mayor and Clerk to sign off on the declaration as well as authorize Westshore Engineering to record the restriction if approved.

E. <u>Consideration of Bids for Southern Avenue, Fifth to Sanford (H-1688).</u> ENGINEERING

SUMMARY OF REQUEST: Award the reconstruction contract for Southern Avenue from Fifth to Sanford to McCormick Sand out of Twin Lake since they were the lowest responsible bidder with a total bid price of $236,732.

FINANCIAL IMPACT: The construction cost of $236,732 plus engineering.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Award the contract to McCormick Sand.

F. <u>Intergovernmental Agreement for Traffic Signal Maintenance.</u> ENGINEERING

SUMMARY OF REQUEST: Endorse the Muskegon County Road Commission (MCRC) selection of Windemuller Electric for the County-wide traffic signal maintenance thru 2016. Windemuller was selected via public bids received by MCRC.

FINANCIAL IMPACT: Based on the historical data over the last four years, it is estimated that the cost will be about $40,000/year.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Endorse the contract between MCRC and

Windemuller Electric.

G. <u>Community Relations Committee.</u> CITY CLERK

SUMMARY OF REQUEST: To accept the recommendations from the Community Relations Committee made at the meeting held on July 8, 2013, as follows:

1. Remove two Target Area Representative Positions from Community Neighborhood Services Board and re-adjust members where applicable.
2. Accept resignation of Norman Cunningham from Civil Service Board.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the Community Relations Committee recommendations.

Motion by Vice Mayor Spataro, second by Commissioner Wierengo to adopt the Consent Agenda as read except for item D.

ROLL VOTE: Ayes: Gawron, Hood, Spataro, German, Wierengo, Turnquist, and Markowski

Nays: None

MOTION PASSES

2013-58 ITEM REMOVED FROM THE CONSENT AGENDA:

D. <u>West Michigan Fossil Jewelry Business/Concession Contract for City of Muskegon Parks.</u> PUBLIC WORKS

SUMMARY OF REQUEST: Staff is asking permission to enter into a one-year contractual agreement with Kevin VanBrocklin of West Michigan Fossil Jewelry at Pere Marquette Park, located within the City of Muskegon, to sell various jewelry items as outlined in the proposal.

FINANCIAL IMPACT: Contract revenue will be 10% of gross receipts, per the Business/Concession Contract.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize DPW staff to enter into a one-year Business/Concession Contract with Kevin VanBrocklin of West Michigan Fossil Jewelry.

Motion by Commissioner Turnquist, second by Vice Mayor Spataro to approve the concession contract for West Michigan Fossil Jewelry at Pere Marquette Park.

ROLL VOTE: Ayes: Hood, Spataro, German, Wierengo, Turnquist, Markowski, and Gawron

Nays: None

MOTION PASSES

2013-59 PUBLIC HEARINGS:

A. <u>Request for an Industrial Facilities Exemption Certificate – Northern Machine Tool.</u> PLANNING & ECONOMIC DEVELOPMENT

SUMMARY OF REQUEST: Pursuant to Public Act 198 of 1974, as amended, Northern Machine Tool, 761 Alberta Avenue, has requested the issuance of an Industrial Facilities Exemption Certificate. The total capital investment is $1,150,000, which includes new personal property and real property improvements. This request qualifies the company for a term of six years for personal property and twelve years for real property.

FINANCIAL IMPACT: The City will capture certain additional property taxes generated by the expansion.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the resolution granting an Industrial Facilities Exemption Certificate.

The Public Hearing opened to hear and consider any comments from the public. Stephen Olson, President of Northern Machine Tool gave an overview of future plans. No public comments were made.

Motion by Vice Mayor Spataro, second by Commissioner Markowski to close the Public Hearing and approve the request for an Industrial Facilities Exemption Certificate for $1,150,000 which includes new personal property for six years and real property improvements for twelve years.

ROLL VOTE: Ayes: Spataro, German, Wierengo, Turnquist, Markowski, Gawron, and Hood

Nays: None

MOTION PASSES

2013-60 NEW BUSINESS:

A. <u>CATV Franchise Agreement.</u> CITY MANAGER

SUMMARY OF REQUEST: The City's 25-year cable TV franchise agreement with Comcast expires August 2, 2013. Legislation adopted in 2007 generally takes franchise negotiations out of local community's control and, instead, requires the use of a "Uniform Video Local Franchise Agreement". Comcast recently (June 20th) submitted a Uniform Franchise Agreement for the City's consideration. The City has 15 business days to respond as to the completeness of Comcast's Uniform Franchise application and 30 business days in which to approve the application.

The City of Detroit previously challenged the Uniform Franchise in federal court and that court has generally found in favor of Detroit. However, final resolution of the Detroit case is several months away.

Our legal counsel on this matter advises that it is in the City of Muskegon's interest to: 1) deny the Uniform Franchise as initially submitted by Comcast and delegate authority to negotiate with Comcast to the City Manager by adoption of the resolution and, 2) send the reply letter to Comcast.

FINANCIAL IMPACT: There is no immediate budgetary impact. The franchise fee received by the City remains at 5%. Depending on the final outcome of negotiations with Comcast and/or the Detroit litigation, the City may receive additional benefits from the franchise renewal.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Adoption of the delegation resolution.

Motion by Commissioner Hood, second by Vice Mayor Spataro to adopt the delegation resolution.

ROLL VOTE: Ayes: German, Wierengo, Turnquist, Markowski, Gawron, Hood, and Spataro

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 6:00 p.m.

Respectfully submitted,

Ann Marie Cummings, MMC
City Clerk

AGENDA ITEM NO. ______________

CITY COMMISSION MEETING <u>July 23, 2013</u>

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: July 12, 2013

RE: Human Resources Agreement

<u>SUMMARY OF REQUEST</u>:
To renew the agreement with County of Muskegon to provide human resources services to the city from July 1, 2013 through June 30, 2014.

<u>FINANCIAL IMPACT</u>:
$75,000 plus incidental costs.

<u>BUDGET ACTION REQUIRED</u>:
None.

<u>STAFF RECOMMENDATION</u>:
To approve the agreement and authorize the mayor and clerk to sign it.

<u>COMMITTEE RECOMMENDATION</u>:

**AGREEMENT BETWEEN THE CITY OF MUSKEGON
AND THE
MUSKEGON COUNTY BOARD OF COMMISSIONERS**

THIS AGREEMENT, entered into as of the 1st of July, 2013, between the City of Muskegon, a municipal corporation, by its City Commission, ("City"), the City of Muskegon Civil Service Commission ("CSC"), and the County of Muskegon, by its Board of Commissioners, ("County"), is as follows:

PURPOSE

The purpose of this Agreement is to provide for human resources services to be administered by the County Human Resources Department ("Human Resources Department"), which will provide a wide range of Human Resources services which will be described in detail in the following agreement.

I. **RELATIONSHIP OF THE PARTIES** - The County Department of Human Resources Department and Deborah Groeneveld shall perform all of the services under this Agreement as an Independent Contractor and not as an employee of the City of Muskegon. This Agreement does not create a partnership, joint venture, or any other relationship.

II. **TERM** - The agreement shall commence July 1, 2013 and terminate June 30, 2014, provided that either party may terminate the Agreement with six (6) months notice. The notice shall be sent by certified mail to the County Human Resources Director and the Chair of the CSC if terminated by the City. The notice shall be sent by certified mail to the City Manager and the Chair of the CSC if terminated by the County. The notice shall be sent by certified mail to the County Human Resources Director and the City Manager if the CSC terminates the appointment of Deborah Groeneveld as Personnel Director or terminates the Agreement.

III. **SCOPE OF SERVICE FOR THE CITY** – The Human Resources Department will provide recruitment, advertising, pre-employment physicals and orientation services for new city employees under the guidelines of the City of Muskegon Charter, Civil Service Rules and Regulations, and appropriate collective bargaining agreements. The Human Resources Department will also provide class and pay administration, benefit administration and maintain a complete set of personnel records for the City. The County will also assist City departments with the Employee Assistance Program (EAP), CDL drug testing, and unemployment. The County will also assist City departments and the CSC with disciplines, layoffs, recalls, and terminations.

IV. **SCOPE OF SERVICE FOR THE CSC** – The Human Relations Department will provide recommendations to the CSC as to rules relating to the examination and selection process in the classified service of the City. The Human Resources Department will provide assistance to the CSC in classifying positions, enforcing the administration of the Civil Service Rules, holding examinations for the filling of positions in the classified service, preparing and maintaining an eligibility list of persons passing examinations for positions, and certifying names of person to appointing officers for appointment to a classified position. The Human Resources Department will provide assistance to the CSC in the processing of requests for a leave of absence, temporary appointments, layoffs and recall of personnel, appeals of employees to the CSC relating to a discharge, reduction in rank or compensation, pursuant to the City Charter and Civil Service Rules, as modified by any applicable collective bargaining agreement.

V. **COUNTY HUMAN RESOURCES DEPARTMENT OBLIGATIONS** - The County agrees to perform the services and provide the materials set forth herein:

A. **QUALIFIED STAFF** - All County employees engaged in the performance of this Agreement shall be professional in manner and appearance and be trained in Human Resources Administration policies and procedures. The County Human Resources Director shall be responsible to ensure all duties are performed adequately.

B. **EQUIPMENT AND SUPPLIES** - The County will provide all equipment and supplies needed for the routine performance of its duties without additional expenses, except as otherwise set forth herein.

C. **MANUALS** - The current City of Muskegon Civil Service Charter and collective bargaining agreements shall be the documents followed for all recruitment activities. All other manuals needed to perform all functions will be provided by the County. (ex: ADA, Fair Labor Standards, FMLA Manuals).

D. **PERSONNEL RECORDS** - The County will maintain the master personnel files in the Muskegon County Human Resources Department. The personnel files shall be the property of the City.

E. **PUBLIC RELATIONS** - Good public relations are vital to the success of the Human Resources administration program. During the terms of this Agreement, County employees shall endeavor to promote understanding and amicable relations with City Departments and members of the public.

F. **RECRUITMENT AND CERTIFICATION OF APPLICANTS** - The County at the direction of the City and/or CSC shall advertise and compile applications for job openings. Qualified applicants will be tested and certified for employment selection. The City shall be responsible for any costs incurred for any testing material designated by the City and/or CSC. The City shall also be responsible for any advertising costs incurred over five hundred ($500) dollars per agreement year.

G. **PHYSICALS AND ORIENTATIONS** - The County shall direct selected applicants through the physical and orientation process prior to starting employment. Selected applicants will be given orientations on employment procedures, policies and benefits at the direction of the City. The City shall be responsible for any costs incurred for the physical, back screen and drug test of selected applicants.

H. **CLASS AND PAY ADMINISTRATION** - County staff will maintain, modify or develop at the direction of the City class specifications for classes of work at the City.

I. **BENEFIT ADMINISTRATION** - The County shall provide assistance to the City and/or CSC with issues pertaining to FMLA (Family Medical Leave Act), UI (Unemployment Insurance), and the City's EAP (Employee Assistance Program). The City shall designate and provide the legal services for any contested unemployment proceeding filed during the existence of this agreement. Any counsel retained to handle a proceeding shall work under the direction of the

Human Resources Director. The City shall be responsible for any costs incurred for unemployment claims and the City EAP program.

J. **COMPUTERIZED INFORMATION TECHNOLOGY** – The County will provide staff, equipment, and software to maintain electronic records of recruitment activities using an applicant tracking system (SIGMA/NEOGOV) and testing software (OPAC), and human resources forms processing for current employees.

K. **LABOR RELATIONS RELATED ISSUES** - The County will provide services to the City and/or CSC on issues of discipline, layoff, recall and termination hearings. The City shall designate and provide the legal services for any labor related issue during the existence of this agreement. Any counsel retained to handle a proceeding shall work under the direction of the Human Resources Director.

L. **RECORDS MAINTENANCE AND ACCESS** – The County agrees to maintain personnel records with the most current information the Municipality makes available.

1. All changes of employee status, wages, trainings and certifications will be kept in the personnel file of the employee.

2. City staff and CSC Commissioners will be afforded access to personnel files per a policy or procedure designated by the City and CSC.

3. Personnel files are to be maintained at the County Human Resources Department during the term of this agreement, unless mutually agreed that these records may be maintained at another location.

VI. **CITY AND CSC OBLIGATIONS** - The City and CSC shall undertake the following:

A. **CSC FILES AND RECORDS** - The CSC shall provide Chapter XV of the City of Muskegon Charter, current Civil Service Rules, policies and procedures, personnel records, recruitment procedures, and all other documents maintained by the City of Muskegon Personnel Director to the Human Relations Department.

B. **CITY FILES AND RECORDS** - The City shall provide policies and procedures concerning class and pay administration, benefit administration or any Human Resources function presently performed by City employees, except as otherwise provided above, to the Human Relations Department.

C. **CIVIL SERVICE DIRECTOR** - The CSC shall appoint Deborah Groeneveld as the City of Muskegon Personnel Director, whom shall serve at the pleasure of the CSC. Deborah Groeneveld shall receive no additional compensation for serving as the City's Personnel Director and shall not be an employee of the City. Deborah Groeneveld shall be responsible, subject to delegation, to satisfying the obligations to be provided to the CSC.

VII. **FEES AND PAYMENTS** - The County will perform all the above services for the Municipality, subject to fees and expenses set forth and under the terms and conditions herein:

A. **FEES** - The fee for the agreement year, which is from July 1, 2013 to June 30, 2014, shall be $75,000, in addition to UI (unemployment insurance), pre-employment physical, testing and advertising costs as otherwise set forth herein.

B. **PAYMENTS** - The Municipality shall remit the annual fee in equal quarterly payments of $18,750 each. The payment is owed regardless of whether Deborah Groeneveld is appointed by the CSC as the City's Personnel Director.

VIII. MISCELLANEOUS

A. **SECTION HEADINGS** - The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

B. **SEVERABILITY** - If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

C. **ENTIRE AGREEMENT AND AMENDMENT** - In conjunction with matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreements, course of conduct, waiver or estoppel. This agreement is subject to obligations, if any, provided for in collective bargaining agreements involving the City, the City of Muskegon Charter and the City of Muskegon Civil Service Rules and Regulations.

D. **SUCCESSORS AND ASSIGNS** - All representations, covenants, and warranties set forth in the Agreement by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

E. **TERMS AND CONDITIONS** - The terms and conditions used in this Agreement shall be given their common and ordinary definition and will not be construed against either party.

F. **EXECUTION OF COUNTERPARTS** - This Agreement may be executed in any number of counterparts and each such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

ACKNOWLEDGEMENTS

City of Muskegon

By: ______________________________

Stephen J. Gawron
Mayor

By: ______________________________

Ann Marie Cummings
City Clerk

County of Muskegon:

By: ______________________________

Kenneth Mahoney
Chairman Board of Commissioners

By: ______________________________

Nancy A. Waters
County Clerk

City of Muskegon
Civil Service Commission

By: ______________________________

David George Newsome
Chair

CITY COMMISSION MEETING DATE

July 23, 2013

Date: **July 16, 2013**

To: **Honorable Mayor and City Commissioners**

From: **Cathy Brubaker-Clarke, Director of Community & Economic Development**

Re: **Special Event Request – Michigan Beach Polo Request to serve beer & wine during beach polo event at Pere Marquette Park (2nd year event)**

SUMMARY OF REQUEST: The organizers of the Michigan Beach Polo event are requesting to serve beer and wine during their beach polo match at Pere Marquette Park on August 10, 2013. They are partnering with the Helen DeVos Children's Hospital Foundation. This is the event's 2nd year.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the sale of beer and wine at Pere Marquette Park on August 10, 2013 during the beach polo game.

COMMITTEE RECOMMENDATION: N/A

CITY COMMISSION MEETING DATE

July 23, 2013

Date: **July 16, 2013**

To: **Honorable Mayor and City Commissioners**

From: **Cathy Brubaker-Clarke, Director of Community & Economic Development**

Re: **Special Event Request – Catamaran Racing Association of Michigan (CRAM) Request to hold a Catamaran sailing regatta with overnight camping at Pere Marquette Park (6th-year event)**

SUMMARY OF REQUEST: CRAM is requesting permission to hold a Catamaran sailing regatta at Pere Marquette Park, July 25 through 28, 2013. They would like to use the City-owned parking lot across from the former Captain Jack's restaurant for overnight camping on July 25, 26, and 27, 2013. They expect less than 10 RVs in the lot overnight, and they will provide a portable toilet for the campers' use. This is the event's sixth year of operation and there have never been any problems with this group. They have provided proof of liability insurance.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve overnight camping at Pere Marquette Park for this event on July 25, 26, and 27, 2013.

COMMITTEE RECOMMENDATION: N/A

Commission Meeting Date: July 23, 2013

Date: July 17, 2013

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Vacation of Temple St south of Delano Ave

SUMMARY OF REQUEST:

Staff is requesting to vacate the portion of Temple Street south of Delano Avenue.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends vacation of the street, with the condition that all utility easement rights be retained.

COMMITTEE RECOMMENDATION:

The Planning Commission recommended vacation of the street at their July meeting, with the condition that all utility easement rights be retained.

CITY OF MUSKEGON

RESOLUTION #2013-

RESOLUTION TO VACATE A PORTION OF A PUBLIC STREET

WHEREAS, a petition has been received to vacate Temple Street south of Delano Avenue; and

WHEREAS, the Planning Commission held a public hearing on July 11, 2013 to consider the petition and subsequently recommended the vacation; and

WHEREAS, due notice had been given of said hearing as well as the July 23, 2013 City Commission meeting to consider the recommendation of the Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the City Commission deems it advisable for the public interest to vacate and discontinue Temple Street south of Delano Avenue; and

BE IT FURTHER RESOLVED that the City Commission does hereby declare the said portion of street vacated and discontinued provided, however, that this action on the part of the City Commission shall not operate so as to conflict with any fire access or the utility rights heretofore acquired by the City or by any public service utility in the City of Muskegon, operating in, over and upon said portion of street hereby vacated, and it is hereby expressly declared that any such rights shall remain in full force and effect;

BE IT FURTHER RESOLVED that after any maintenance and repair by the City, the city shall restore the disturbed area to the grade and paving in existence at the time of vacation. The City shall not be responsible to replace special planting, landscaping, fences or any structure. No structure shall be placed in the vacated street which, in the sole judgment of the City, will interfere with the repair or maintenance of utilities in the easement, public or private.

Adopted this 23rd day of July, 2013.

Ayes:

Nays:

Absent:

By: ________________________________
Stephen Gawron, Mayor

Attest:______________________________
Ann Cummings, MMC, City Clerk

CERTIFICATE (Vacation of Temple Street south of Delano Avenue)

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan, at a regular meeting held on July 23, 2013.

Ann Cummings, MMC
Clerk, City of Muskegon

CITY OF MUSKEGON
PLANNING COMMISSION
STAFF REPORT (EXCERPT)

Hearing, Case 2013-09: Staff initiated request to vacate the portion of Temple Street south of Delano Avenue

BACKGROUND

The City of Muskegon has recently sold the vacant lot on Temple St in the Seaway Industrial Park to Schultz Transportation. The company currently runs their business on the parcel of land to the east of this vacant lot. They would like to combine the two lots so that they can operate their business on one contiguous piece of property. In order to do so, Temple St, which separates the two parcels, must be vacated. Although an easement was created for the establishment of Temple St, the road was never created.

Temple St easement looking south from Delano Ave

Commission Meeting Date: July 23, 2013

Date: July 17, 2013

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Acceptance into the Redevelopment Ready Communities program

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SUMMARY OF REQUEST:

The City of Muskegon has been selected to participate in the Michigan Economic Development Corporation's (MEDC) Redevelopment Ready Communities (RRC) program. The program measures and then certifies communities that integrate transparency, predictability and efficiency into their daily development practices. The RRC is a formal recognition that a community has a vision for the future and the fundamental practices on place to get there. Participation in the program could potentially lead to grant and marketing opportunities.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends acceptance into the RRC program and for the Mayor to sign the Memorandum of Understanding and resolution..

COMMITTEE RECOMMENDATION:

None.

Resolution No. _______

MUSKEGON CITY COMMISSION

A RESOLUTION AUTHORIZING THE CITY OF MUSKEGON TO APPROVE AND FULLY PARTICIPATE IN THE MICHIGAN ECONOMIC DEVELOPMENT CORPORATION (MEDC) REDEVELOPMENT READY COMMUNITIES PROGRAM AND APPROVE THE MEMORANDUM OF UNDERSTANDING

WHEREAS, the Michigan Economic Development Corporation (MEDC), selected the City of Muskegon as one of eight communities to participate in the Redevelopment Ready Communities Program; and

WHEREAS, the expectation of the program is to complete a comprehensive review of the City of Muskegon development processes as established by the City of Muskegon, to make an improvements in transparency and effective communication; and

WHEREAS, the program includes evaluating the strong partnerships with the City Committees related to development, including the Downtown Development Authority, Economic Development Corporation, Planning Commission and the Historic District Commission; and

NOW, THEREFORE, it is resolved as follows:

1. The Muskegon City Council is willing to participate in the MEDC Redevelopment Ready Communities Program, which will involve interacting with the Downtown Development Authority, Economic Development Corporation, Planning Commission and Historic District Commission.
2. This resolution shall take effect upon authorization by the Muskegon City Commission.
3. All resolutions and parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

Adopted this 23rd Day of July 2013.

Ayes:

Nays:

Absent:

BY: ________________________________
Stephen Gawron, Mayor

ATTEST: ________________________________
Ann Cummings, City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on July 23, 2013.

____
Ann Cummings, City Clerk

Redevelopment Ready Communities®
Joint Memorandum of Understanding

This Memorandum of Understanding ("MOU") by and between the Michigan Economic Development Corporation ("MEDC"), 300 North Washington Square, Lansing, Michigan and City of Muskegon ("Community"), 933 Terrace Street, Muskegon, Michigan, jointly referred to as the "Parties" and individually as the "Party" is effective as of August 26, 2013 ("Effective Date").

The Community is interested in applying to the MEDC under the Redevelopment Ready Communities® Program ("Program") to become certified as a Redevelopment Ready Community ("RRC") and receive assistance from the Program in promoting sites within the Community.

The MEDC is interested in evaluating the Community and making recommendations for the Community to become certified as a RRC under the Program and help market the Community to the public for redevelopment purposes.

Therefore, the above entities have come together in a strategic collaboration to achieve the above stated goals. This collaboration is based on the following understandings:

Community Responsibilities

1. Identifying a primary Program contact who will serve as the lead contact and provide overall technical support for all aspects of this project on behalf of the Community.
2. Provide adequate staff personnel to attend trainings, perform research collection and assessment of current practices of the Community and to implement the recommendations of the MEDC after the evaluation.
3. Within fifteen (15) days of this MOU, complete the Pre-Evaluation document and provide supporting information as required by the MEDC.
4. Within sixty (60) days of the Certification Assessment Report of Findings presentation, provide a resolution adopted by the Community's elected governing body that supports the Community's intent to implement the MEDC identified recommendations if necessary to meet the Program best practices.
5. Within one hundred eighty (180) days, complete implementation of MEDC identified recommendations, if necessary, to meet the Program best practices.
6. Provide documentation that the Community meets the Program best practices as determined by the MEDC prior to being awarded certification.

MEDC Responsibilities

1. Provide general training on the Program.
2. Provide general technical support to the primary Program contact of the Community in collecting the information necessary to complete the Pre-Evaluation document and implementation of the best practices.
3. Evaluate the information from the Pre-Evaluation documents.
4. If necessary, make recommendations of steps to meet the best practices as identified by the MEDC.
5. Once the Program best practices are met, the MEDC will coordinate with the RRC Advisory Council to receive input in certifying the Community as a RRC.
6. If certified as a RRC, assist the Community in marketing to the public up to three sites as redevelopment ready.
7. Prepare a license agreement between the Community and the MEDC for Community's use of the RRC logo.

This MOU sets forth the intent of the Parties only and does not, and is not intended to, impose any binding obligations on the Parties nor shall it be the basis for any legal claims or liabilities by or among the Parties. Any liability of the Parties, whether in contract, tort or under any other legal or equitable theory, arising out of or in connection with this MOU shall be explicitly excluded. Neither Party shall be entitled to claim compensation for any expenses or losses incurred in bad faith if the intention of this MOU cannot be reached entirely or in part.

This MOU constitutes the entire agreement between the Parties hereto. This MOU may be modified, altered, revised, extended or renewed by mutual written consent of all Parties, by the issuance of a written amendment, signed and dated by all the Parties.

This MOU may be signed in multiple copies and in counterparts which, when taken together, shall constitute the executed MOU. Faxed or scanned copies shall be considered an original.

This MOU is effective until the three year anniversary of the date the Community is certified as a RRC, unless terminated earlier. However, either Party may terminate the MOU by providing notice in writing to the other Party thirty (30) days in advance of the termination.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their respective authorized representatives.

______________________________ __________________

Stephen Gawron, Mayor Date
City of Muskegon

______________________________ __________________

Jennifer Nelson, Chief of Staff & General Counsel Date
Michigan Economic Development Corporation

Date: May 23, 2013

To: Honorable Mayor and City Commissioners

From: Public Safety Director, Jeffrey A. Lewis

RE: Fireworks Ordinance Amendment

SUMMARY OF REQUEST:

It is requested the City Commission approve the attached Ordinance Amendment which provides for the regulation of the ignition, discharge and use of consumer fireworks, as allowed under the Michigan Fireworks Safety Act.

The ordinance specifically limits the days and hours Consumer fireworks may be ignited, discharged or used in the City. The ordinance prohibits the use of fireworks while under the influence of alcohol or drugs. The Public Safety Office wants to ensure no person shall recklessly endanger the life, health, safety, or well-being of any person by the ignition, discharge, or use of consumer fireworks.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the Ordinance as presented.

City of Muskegon
Muskegon County, Michigan
Ordinance Amendment No. _____

THE CITY OF MUSKEGON HEREBY ORDAINS:

Chapter 54, Offenses and Miscellaneous Provisions, Code of Ordinances of the City of Muskegon is amended to include the following new Article VIII concerning fireworks.

Article VIII. Fireworks.

Sec. 54-301. Purpose of article.

The purpose of this article is to provide for the regulation of the ignition, discharge and use of consumer fireworks, as allowed under the Michigan Fireworks Safety Act, MCL § 28.451 et.seq., as amended.

Sec. 54-302. Definitions.

"Act 256" means the Michigan Fireworks Safety Act, Act 256 of the Public Acts of Michigan of 2011, being MCL § 28.451, et. seq., as amended.

"Consumer fireworks" means that term as defined in Act 256.

"Firework" or "fireworks" means that term as defined in Act 256.

Sec. 54-303. Use of consumer fireworks prohibited.

Consumer fireworks may be ignited, discharged or used in the City only on the day proceeding, the day of, or the day after a national holiday, except for between the hours of 1a.m. and 8 a.m. when prohibited, as provided for in Act 256. No person shall ignite, discharge or use consumer fireworks in the City on any other day of the year at any time.

Sec. 54-304.Safety.

No person shall recklessly endanger the life, health, safety, or well-being of any person by the ignition, discharge, or use of consumer fireworks.

Sec. 54-305. Use of alcohol or controlled substances and fireworks prohibited.

No person shall discharge, ignite or use fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, consistent with Act 256.

Sec. 54-306. Penalty.

Any person violating the provisions of this Chapter shall be responsible for a civil infraction and fined up to $500.00.

This ordinance adopted:

Ayes: ____
Nays: ____

Adoption Date: ________________________
Effective Date: ________________________
First Reading: ________________________
Second Reading: ________________________

CITY OF MUSKEGON

By: ______________________________
Ann Cummings, MMC, Its Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the day of , 2013, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted, and public notice was given, pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

DATED: , 2013

Ann Cummings, MMC
Clerk, City of Muskegon

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

CITY OF MUSKEGON
NOTICE OF ADOPTION

TO: ALL PERSONS INTERESTED

Please take notice that on **___________________**, 2013, the City Commission of the City of Muskegon adopted an amendment to Chapter 54, Offenses and Miscellaneous Provisions, whereby Article VIII was added.

1. Section 54-301 indicates the purpose of the ordinance is to regulate the ignition, discharge and use of consumer fireworks.

2. Section 54-302 provides definitions of terms used within the ordinance, all of which are consistent with definitions within the Michigan Fireworks Safety Act, Act 256 of the Public Acts of Michigan of 2011, being MCL § 28.451, et. seq., as amended.

3. Section 54-303 indicates that consumer fireworks may be ignited, discharged or used in the City only on the day proceeding, the day of, or the day after a national holiday, except for between the hours of 1a.m. and 8 a.m. when prohibited, and that no person shall ignite, discharge or use consumer fireworks in the City on any other day of the year at any time.

4. Section 54-304 indicates that no person shall recklessly endanger the life, health, safety, or well-being of any person by the ignition, discharge, or use of consumer fireworks.

5. Section 54-305 indicates that no person shall discharge, ignite or use fireworks while under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

6. Section 54-306 indicates that any person violating the provisions of this Chapter shall be responsible for a civil infraction and fined up to $500.00.

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

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

CITY OF MUSKEGON

Published: __________________, 2013 By: ________________________________
Ann Cummings, MMC, Its Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

CITY COMMISSION MEETING DATE
July 23, 2013

Date: **July 15, 2013**

To: **Honorable Mayor and City Commissioners**

From: **Cathy Brubaker-Clarke, Director of Community & Economic Development**

Re: **Special Event Request – Bassmasters Tournament Request to sell liquor**

SUMMARY OF REQUEST: The Muskegon County Convention & Visitors Bureau and the Muskegon Jaycees have filed a special event application for the 2013 Bassmasters Elite Series Toyota All Stars (fishing) Tournament to be held in Muskegon September 26 – 29. In conjunction with the tournament, there will be events taking place at Heritage Landing, including alcohol service.

The event applicants are requesting approval to sell liquor at the event and offer limited free samples. Evan Williams is a main sponsor of the Bassmaster Elite Series, and will have a tent on the grounds to promote their products. Part of their promotion is to provide free samples of their whiskeys to patrons. The Jaycees will provide volunteers to man this tent and control the sampling process. The Evan Williams samples will be poured using ½ ounce measured pourers, essentially giving one “shot” per sample. In order to keep track of how many samples a patron has, their wristband will be punched or otherwise marked, indicating to the volunteer servers that they are eligible for any samples.

State law dictates that free samples of liquor can be provided under a special event license, with the following requirements:

1. Sample size cannot exceed ½ ounce.
2. Patrons are allowed no more than two samples per day.

The Evan Williams booth would also like to offer mixed drinks for sale (liquor with cola or some other mixer), with stoppers on the bottle measuring out 1-ounce or 1 ¼-ounce shots. They would like patrons to be able to roam the entire liquor-controlled venue of Heritage Landing with the drinks, and not be restricted to just the Evan Williams booth.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION:

COMMITTEE RECOMMENDATION: N/A

Bassmaster Elite Series Toyota Truck All-Stars Tournament – September 27-29, 2013

Event Description

B.A.S.S. (Bass Anglers Sportsman Society), the nation's top sportfishing organization, is bringing their prestigious Elite Series Toyota Truck All-Stars Tournament to Muskegon County on September 27th through the 29th of this year. The star-studded event brings the top 14 bass fishermen in the country to our area for the first time ever, fishing both Muskegon Lake and White Lake and competing for a $100,000 cash prize. In addition, highlights from the weekend will be broadcast nationwide on ESPN 2.

The tournament is a free admission event, with Heritage Landing serving as the location for daily weigh-ins and a fishing/outdoors festival called the Fall Fishing Festival or "F-3". B.A.S.S. will also sponsor a Collegiate Tournament with top college anglers participating, as well as a Veteran's Pro-Am Event pairing local veterans with the top names in bass fishing.

Tentative Event Timeline

Friday, 9/27/13 – Craft Beer Night:
Grounds open at 12:00PM, with food and beverage vendor tents, imported and craft beers, children's activities, live music, and local sponsor area. Weigh-in at 4:00PM. Grounds close at 11:00PM.

Saturday, 9/28/13 – Festival Night:
Grounds open at 12:00PM, with food and beverage vendor tents, live music, children's activities, and local sponsor area. Weigh-in at 4:00PM. Grounds close at 11:00PM.

Sunday, 9/29/13 – Final Weigh-In:
Grounds open at 12:00PM, with food and beverage vendor tents, live music, children's activities, and local sponsor area. Grounds close at 6:00PM (or after final weigh-in).

Venue (see attached layout)

The event will be taking place at Heritage Landing in downtown Muskegon. This park has a long history of hosting festival events, and its newly-installed permanent perimeter fencing provides an outer layer of security for a liquor control area within the park grounds. B.A.S.S. will set up their stage, Jumbo-Tron, and production equipment at the back of the grounds, facing the permanent stage. Near that area will be the locations for merchandise tents, sponsor displays, food vendors, and beverage tents. Temporary fencing will be in place within the park grounds to segregate the "backstage" and unused areas.

Beer/Wine Serving

The Greater Muskegon Jaycees will be sponsoring the Special Event License for the Toyota Truck All-Stars Tournament and Fall Fishing Festival. The Jaycees have a great track record of running these types of events, as they are involved with Parties In The Park every year along with other events like Coast West Music Festival, Muskegon Rockstock and Moosefest. Volunteers for beer/wine serving will be provided by the chapter. Serving stations will have captains that are either TIPS or TAM certified, or have attended the city's alcohol safety program.

A wristband will be provided to all patrons wishing to consume alcoholic beverages. A valid, picture ID must be provided by the patron to acquire the wristband. If they do not have a valid ID, they will not be served.

This beverage tent will have a selection of beer, wine, and malt beverage available for purchase by patrons. As with other special events, patrons will need to purchase beverage tickets, which can be exchanged for alcoholic beverages.

Spirits Serving

Evan Williams is a main sponsor of the Bassmaster Elite Series, and they will have a tent on the grounds to promote their products. Part of their promotion is to provide free samples of their whiskeys to patrons. The Jaycees will also provide volunteers to man this tent, and control the sampling process. Only Evan Williams products will be available at this serving tent.

State law dictates that free samples of liquor can be provided under a special event license, with the following requirements:

1. Sample size cannot exceed ½ ounces.
2. Patrons are allowed no more than two samples per day.

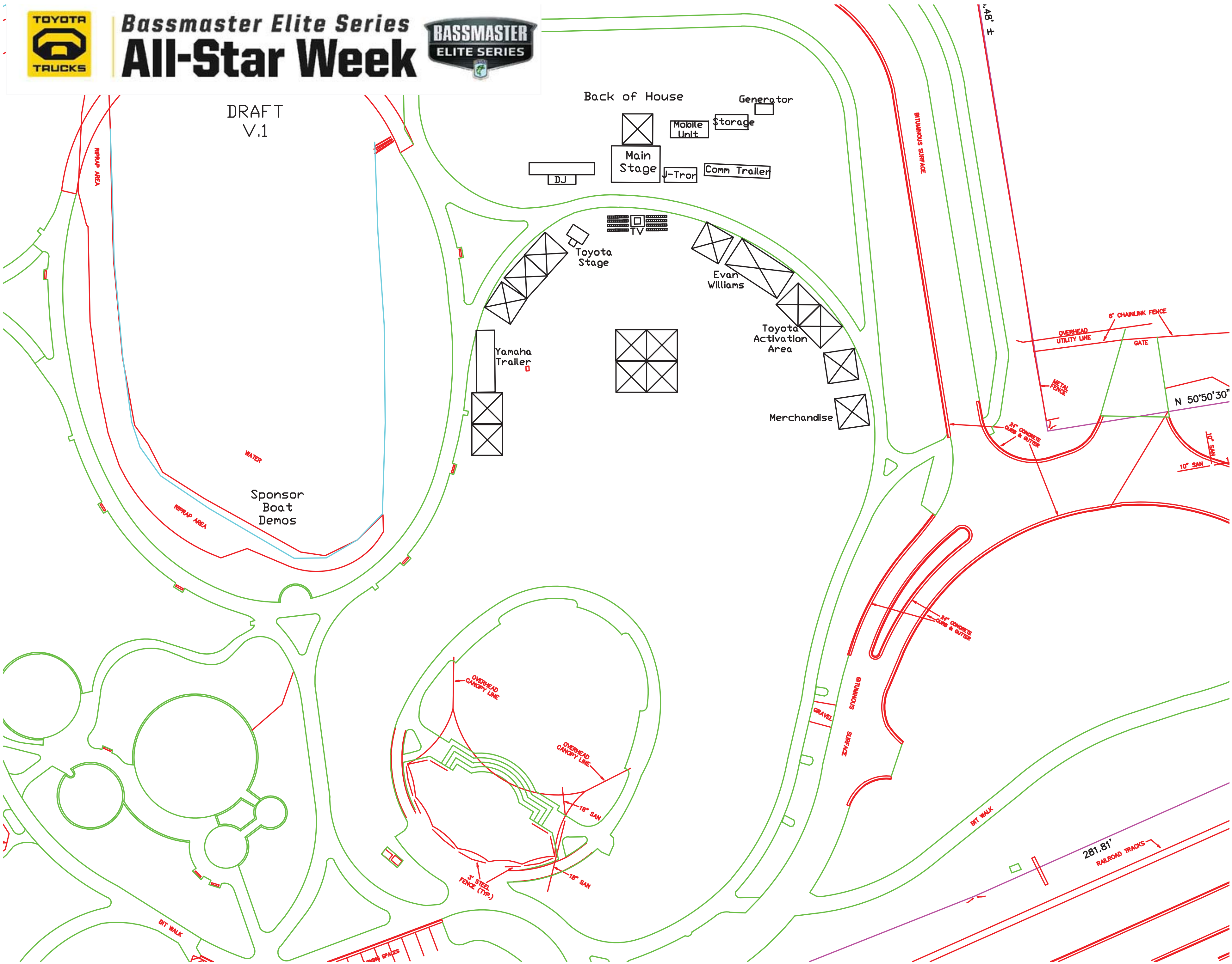
The Evan Williams samples will be poured using ½ ounce measured pourers, essentially giving one "shot" per sample. There will be no "free pouring" of any Evan Williams products in their tent.

In order to keep track of how many samples a patron has, their wristband will be punched or otherwise marked, indicating to the volunteer servers that they are eligible for any samples.

Summary

This event brings a new audience to Muskegon, one that appreciates the outdoors and is generally very family-oriented. The Fall Fishing Festival will be an all-ages event, with children's and family activites, and live music. Estimated attendance for the event is anywhere from 2,500-5,000 patrons per day. The Greater Muskegon Jaycees are excited to be a part of this event, and want to help make it a success.

Respectfully,
Chris Annis
79th President, Greater Muskegon Jaycees
president@muskegonjaycees.org


TOYOTA TRUCKS
Bassmaster Elite Series
All-Star Week
BASSMASTER ELITE SERIES
DRAFT
V.1
Back of House
Generator
Mobile Unit
Storage
Main Stage
DJ
J-Tron
Comm Trailer
TV
Toyota Stage
Evan Williams
Toyota Activation Area
Merchandise
Yamaha Trailer
Sponsor Boat Demos
WATER
RIPRAP AREA
BITUMINOUS SURFACE
6" CHAINLINK FENCE
OVERHEAD UTILITY LINE
GATE
METAL FENCE
N 50°50'30"
24" CONCRETE CURB & GUTTER
10" SAN
OVERHEAD CANOPY LINE
18" SAN
3' STEEL FENCE (TYP.)
GRAVEL
BIT WALK
281.81'
RAILROAD TRACKS

AGENDA ITEM NO. ______________

CITY COMMISSION MEETING ____________________

TO: Honorable Mayor and City Commissioners

FROM: Bryon L. Mazade, City Manager

DATE: July 18, 2013

RE: Agreements with Harris Hospitality for Pere Marquette Park

SUMMARY OF REQUEST:
To approve a Development Agreement, Ground Lease and Option Agreement with Harris Hospitality for the development of a portion of Pere Marquette Park.

FINANCIAL IMPACT:
$6,000 annual lease payments during initial term.

BUDGET ACTION REQUIRED:
None.

STAFF RECOMMENDATION:
To approve the request and authorize the mayor and clerk to execute the documents, subject to city staff approval of each and every exhibit.

COMMITTEE RECOMMENDATION:
None.

OPTION AGREEMENT

This Option is made on ______________, 2013 between the City of Muskegon ("City") and 1601 Beach, LLC ("Harris") with reference to the following facts:

Background

A. City owns the property legally described on Exhibit A ("Leased Premises"). City has leased the Premises to Harris pursuant to the terms of a written Lease Agreement ("Lease").

B. City owns property legally described on Exhibit B adjacent to the Leased Premises ("Option Property"). City desires to grant Harris an option to lease the Option Premises according to the terms and conditions set forth below.

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

1. Grant of Option. City grants Harris an option to lease the Option Premises pursuant to the terms set forth in this Option Agreement.

2. Term of Option. The term of this Option shall commence on ___________________,2013 and shall continue until the sooner of (a) the termination of the Lease between City and Harris dated ______________, (b) when a majority interest of 1601 Beach LLC is no longer owned by Andrew Harris, Michelle Harris, and Fred Scharmer, (c) transfer of the Lease between City and Harris dated ____________,2013 to another entity, except for a transfer to substantially the same owners of 1601 Beach LLC, or (d) the execution of a lease to a third party of the property after full compliance with the terms of this Agreement. After the termination as provided above, the parties shall execute and acknowledge any documents necessary to release the rights contained in this Agreement. In the event a portion, but not all, of the City's property depicted in Exhibit B is leased to a third party after full compliance with the terms of this Agreement, the rights under this Agreement shall only terminate to the extent of the property leased and shall remain in full force and effect with regard to the remainder of the property.

3. **Option.** If at any time City desires to develop and lease all or a portion of the property described in Optioned Premises, the City shall send to Harris a copy of the request for proposals. Harris shall have the right for a period of 60 days to propose a development substantially similar to what is requested and City and Harris shall enter into mutually acceptable documents to evidence their agreement to develop all or a portion of the Optioned Property. If Harris fails to notify the City within the 60 day period, City may seek proposals from another party.

If at any time City receives a bona fide written offer, which City intends to accept, from any party to develop and lease all or a portion of the property described in Optioned Premises, the City shall send to Harris a copy of the proposal. Harris shall have the right for a period of 60 days to propose an alternate development, which the City must consider, or accept in writing the terms of the proposed development and lease on the terms that are the same or better than the terms specified in a proposal. If Harris fails to notify the City within the 60 day period, City may lease the property and permit development to another party.

Nothing herein shall prevent Harris from presenting its own proposal for the lease and development of all or a portion of the Optioned Premises during the term of the Lease. The City is not obligated however to consider the proposal if it has no desire to develop or lease the property identified in the proposal at that time.

4 **Default.** If City enters into a lease in conflict with this Agreement, Harris may, at its option, have a court of competent jurisdiction declare this Agreement breached and order that the lease is void. This provision shall not be construed to prevent specific performance of this Agreement or of any of its terms by either party.

Comment [JKH1]: Why would the City be allowed to enter into any lease, whether for more or less thn one year, in violation of the Option Agreement.

5. No Restriction of Rights. This Agreement shall not restrict City's right to grant utility easements or grant a license to permit vendors to locate on the property depicted in Exhibit B from May 1 through September 30, so long as no permanent structure is constructed or allowed in the depicted area, and as long as the license to permit vendors is not in conflict with the terms of the Development Agreement between the parties. This Agreement shall not restrict or prohibit a lease of all or a portion of the area depicted in Exhibit B between City and Harris.

6. Notice. Any writings required under this Agreement shall be sent by certified mail, postage prepaid, to the parties at the addresses set forth above. Either party may change the name or address it has listed above by sending a certified letter to that effect to the other party at the above address.

7. Consideration. The consideration for this Agreement is the mutual exchange of the rights given in this Agreement.

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

9. Miscellaneous.

a. ***Governing Law.*** This Agreement is executed in accordance with, shall be governed by, and construed and interpreted in accordance with the laws of the State of Michigan.

b. ***Entire Agreement.*** This Agreement shall constitute the entire agreement, and shall supersede any other agreements, written or oral, that may have been made or entered into, by and between the parties with respect to the subject matter of this Agreement and shall not be modified or amended except in a subsequent writing signed by the party against whom enforcement is sought.

c. ***Binding Effect.*** This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the parties and their respective legal representatives, permitted successors and assigns.

d. ***Counterparts.*** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. This Agreement shall become binding upon the parties when one or more counterparts, individually or taken together, shall bear the signatures of all parties.

e. ***Non-Waiver.*** *No* waiver by any party of any provision of this Agreement shall constitute a waiver by such party of such provision on any other occasion or a waiver by such party of any other provision of this Agreement.

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

g. ***Assignment or Delegation.*** Except as otherwise specifically set forth in this Agreement, Harris shall not assign all or any portion of their rights and obligations contained in this Agreement without the express prior written approval of Seller, which approval may be withheld in Seller's sole discretion. Harris shall be permitted to assign its rights under this Agreement to a legal entity controlled by one of both of Harriss.

h. ***Survival*** *of* ***Representations and Warranties.*** The representations, warranties, covenants and agreements contained in this Agreement and in any instrument provided for in this Agreement shall survive the closing date and continue in full force and effect after the consummation of this purchase and sale and continue until all liabilities of Harris have been fully satisfied.

The parties have executed this Agreement the day and year first above written.

City of Muskegon	**1601 Beach, LLC**
By:____________________________	**By:**_________________________
Title:___________________________	**By:**_________________________
Date:___________________________	**Date:**________________________

Exhibit A
Legal Description of Leased Premises

Exhibit B
Legal Description of Option Premises

GROUND LEASE

THIS LEASE made this ____ day of __________, 2013, by and between City of Muskegon ("City"), a Michigan municipal corporation, and 1601 Beach, LLC, a Michigan limited liability company ("Harris"), in consideration of the mutual covenants and promises herein contained and for other valuable consideration.

<u>WITNESSETH:</u>

1. <u>PREMISES LEASED</u>. The City leases to Harris, and Harris leases from the City, pursuant to the terms and conditions set forth in this Lease, for the premises located at 1601 Beach Street, Muskegon, Michigan and the parking area immediately across the street ("Premises") as more specifically described and identified in Exhibit A attached hereto.

2. <u>TERM</u>. The term of this Lease shall be for a period of five (5) years, commencing on _________________, 2013 ("commencement date").

Provided Harris is not in default under any of the terms and provisions of this Lease at the time of renewal, the City grants to Harris the option to renew this Lease for continuous terms of 5 years. Each option can only be exercised at the completion of the preceding term. The First Renewal Term and each succeeding Renewal Term (if any) shall be based upon all the terms and conditions contained in this Lease, Each of the foregoing options to renew shall be considered to have automatically been renewed unless Harris gives written notice to City no later than twelve (12) months prior to the expiration of the original Term of the Lease, or each succeeding Renewal Term as the case may be, of its intention not to exercise the option.

3. <u>RENTAL</u>: Harris agrees to pay to City at its office or to such other person or persons or at such other place as City shall designate in writing, as rental for the said premises as follows:

(a) During the initial 5 year term, the sum of Six Thousand and 00/100 ($6,000.00) per year, payable as follows: 1/3 by July 1, 1/3 by August 1, and the final 1/3 by September 1.

(b) At the beginning of each successive 5 year option term, the rent shall be increased 10%.

(c) Rental and all other charges hereunder shall promptly be paid without prior demand therefore and without deductions or set-offs for any reason whatsoever, and Harris shall be charged a late fee of ten (10%) percent of the unpaid balance or One Hundred and No/100 ($100.00) Dollars, whichever is greater, for any payment that is received ten (10) days past the due date.

4. <u>USE OF PREMISES</u>. Harris shall use and occupy the Premises for the purposes outlined in its Proposal for Site Development, which is attached as Exhibit B. The specific uses are subject to City's ordinances. This paragraph contemplates that Harris will comply with all laws, local ordinances, and lawful police and health regulations applicable to the use of the Premises, or permit anything to be done on the Premises tending to create a nuisance or disturbance. The City acknowledges that Harris will own and operate a restaurant and event center businesses on the Premises, with live music, and, so long as the operation complies with City ordinances, and that conduct does not constitute a nuisance or disturbance.

Subject to fire damage or other casualty loss, Harris is required to fully operate the said restaurant business on the premises continuously (daily, except for conditions not in the control of Harris) during the period from Memorial Day through Labor Day of each year of every term. In addition to other events of default, failure to substantially comply with the operation of the business during that period shall be a material default and the City shall have the rights as set forth in paragraph 16 below. "Substantial compliance" shall be defined as be open from noon to 8:00 p.m. on 80% of the days between Memorial Day and Labor Day.

5. UTILITIES. Harris shall procure and shall pay the cost when due of all utilities rendered or furnished to the leased premises during the term of this Lease, including electricity, gas, water and sewerage charges.

City shall grant any reasonable requests, in the City's sole discretion, to execute any easements, rights of way, and licenses over the Premises required by any public or quasi public utility company with respect to the construction, operation and use of the Premises.

6. SIGNS. The cost of installing, maintaining, changing and removing any signs upon the leased premises shall be borne by Harris. Harris shall obtain City's written approval, which shall not be unreasonably withheld, as to design, location and the manner of installation prior to placing any sign whatsoever upon the leased premises. The City acknowledges Harris has the right to install signs in the parking lot of the leased premises, subject to the other terms and conditions in this paragraph. Any signs shall comply with all requirements of appropriate governmental authority and all necessary permits or licenses required in connection therewith shall be obtained by Harris at Harris's sole cost and expense. Harris shall maintain all signs in good condition and repair at all times during the term of this Lease. Upon vacating the leased premises, Harris shall remove all signs and repair any damage caused by such removal.

7. ALTERATIONS. Harris hereby accepts the Premises in **"AS IS" CONDITION WITH ALL FAULTS.** City grants its permission, as the landlord as opposed to its governmental authority, to Harris to demolish or renovate the existing building on the Premises. City's permission is subject to the prior approval of a Development Agreement between the parties which will include the construction of another building on the Premises, prior issuance of permits by the City, and evidence of financial ability by Harris to complete the construction.

Harris shall have the right, at its own cost and expense, subject to necessary City permits, to make structural changes and alterations to the interior of any building without City approval, and to place or install within the building such fixtures, partitions, equipment and trade fixtures, together with any additional painting or minor alterations which Harris may find necessary and deem desirable. The building and all fixtures, partitions, equipment, trade fixtures, alterations or changes installed by Harris shall be and remain owned by Harris.

At the expiration of the Lease, Harris shall have 30 days to remove the buildings and all furniture, fixtures and equipment. At the expiration of the 30 days, if the buildings or any furniture, fixtures and equipment is remaining on the property, ownership shall pass to the City. Harris shall execute any and all documents requested by the City to effectuate the transfer of ownership. Any damage to the leased premises caused by the removal of the building or damage to the building caused by the removal of furniture, fixtures and equipment shall be repaired by Harris at the sole cost and expense of Harris. Should Harris fail to do so, City may perform the necessary work to return leased premises to said condition, and Harris shall reimburse City therefore.

8. MAINTENANCE AND REPAIR. Harris shall be solely responsible for repair, maintenance, and snow and sand removal of the parking lot. Notwithstanding the above, the City agrees that as part of its annual spring beach cleanup, it will remove the accumulated sand from the parking lot with its equipment and personnel, at no cost to Harris. Additionally, the City agrees to fill in any cracks in the parking lot as needed. The City will provide the equipment and personnel and Harris will pay for the materials.

If the City intends to repave Beach Street, it agrees to replace the parking lot on the leased premises according to the following terms and conditions. The City will provide the labor and equipment to replace the parking lot, but Harris will pay for the materials.

Harris agrees to maintain the exterior of the new building in good repair. Harris shall keep the sidewalks, entrances and parking lot free from rubbish, ice, and snow. In the event Harris fails to make any of the repairs which it is obligated to make, after having been given 60 days written notice by the City to Harris, City shall be entitled to enter the Premises and make or cause the same to be made, and the amount or amounts expended by it for such repairs shall be due and payable by Harris to City as additional rent.

9. INSURANCE.

9.1 HOLD HARMLESS. To the fullest extent permitted by law, Harris agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees, volunteers, and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers, or others working on behalf of the City, arising out of or is any way connected or associated with this contract. The obligation to defend and hold harmless extends to City's employees, agents, subcontractors, assigns and successors.

9.2 INSURANCE REQUIREMENT. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan and Best Rated A VIII. All coverage shall be with insurance carriers acceptable to City.

9.2.1 Workers' Compensation Insurance. Harris shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable Statutes of the State of Michigan.

9.2.2 Vehicle Liability Insurance. Harris shall procure and maintain during the term of this Agreement, Vehicle Liability Insurance in accordance with applicable statutes of the State of Michigan.

9.2.3 Commercial General Liability Insurance. Harris shall procure and maintain during the life of this contract, commercial general Liability Insurance on an "Occurrence Basis" with limits of liability not less than $1,000,000 per occurrence and/or aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all explosion, Collapse and Underground (SCU) exclusions, if applicable.

9.2.4 Additional Insured. Commercial General Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insureds": The City, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. The endorsement adding the City as additional insured shall read exactly as follows: "The City of Muskegon is hereby added as an additional insured…"

9.2.5 Cancellation Notice. Workers' Compensation Insurance and Commercial General Liability Insurance, as described above, shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) days Advance Written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to: CITY OF MUSKEGON CITY MANAGER."

9.2.6 Proof of Insurance Coverage. Harris shall provide the City certificates and policies endorsing the City as additional insured as listed below:

i. Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance, if applicable;

ii. Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

iii. If so requested, Certified Copies of all policies mentioned above will be furnished.

9.2.7 Harris shall deliver renewal certificates and/or policies to City at least ten (10) days prior to the expiration date.

10. DAMAGE BY FIRE OR OTHER CASUALTY. Prior to construction of a new building, if the building is damaged or destroyed by fire or other cause, rent shall not be abated.

Once a new building is constructed, if all or any portion of the building is damaged or destroyed by fire or other casualty, Harris shall restore the same as nearly as possible to its condition and character immediately prior to such damage or destruction and my use all available proceeds of insurance for such purpose. All insurance proceeds in excess of those used in the restoration shall be the property of Harris. Notwithstanding the foregoing, Harris shall not be obligated to restore the building and shall have the right to terminate this Lease within sixty (60) days after the date of damage if (a) the building shall be substantially damaged by fire or other casualty or cause, or (b) the cost of the repairs, restoration or reconstruction would exceed 25% of the replacement value of the building. If Harris elects to terminate this Lease as provided in this Section, all insurance proceeds received in connection with the fire or other casualty shall to the extent received be paid to Harris. In such event, Harris shall demolish and remove all debris and restore the Premises, as nearly as possible, to its condition immediately prior to the construction of the building.

11. ENCUMBRANCE OF HARRIS' LEASHOLD INTEREST. Harris may encumber by mortgage or other proper instrument its leasehold interest together with all buildings and improvements owned by Harris, as security for any indebtedness of Harris; provided, however, that the fee simple interest of City shall be unaffected and unencumbered by any such security, instrument, or mortgage. The execution of any such mortgage or other instrument shall not be held as a violation of any of the terms or conditions of this Lease. The foreclosure any such mortgage, or other instrument, or any sale thereunder, either by judicial proceedings or by virtue of any power reserved in such mortgagee or conveyance by Harris as a holder of such indebtedness, or the exercising of any right, power, or privilege reserved in any mortgage or other instrument shall be held as a violation of any of the terms or conditions of this Lease. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve Harris from its liability under this Lease. City's interest in the land may not be subordinated or encumbered in any way.

12. <u>REAL ESTATE TAXES</u>. Harris shall during the term of this Lease, pay Real Estate Tax Expense prior to the “due date”, which shall include all real estate taxes and assessments both general and special imposed by federal, state or local governmental authority, or any other taxing authority having jurisdiction over the premises, against the land, buildings and all other improvements.

Harris shall have the right to appeal or contest any tax if it should desire to do so. Any cost or expense, or any penalties, that may be incurred as a result of any such appeal or contest of the amount of the assessed valuation shall be borne by Harris.

13. <u>PERSONAL PROPERTY TAXES</u>. Harris shall pay all taxes levied against its personal property located within the leased premises during the term of this Lease, with such payment to be made prior to the “due date”.

14. <u>EMINENT DOMAIN</u>. If a part of the leased premises shall be taken by any public authority under the power of eminent domain, then the term of this Lease shall cease on the part so taken from the date possession of that part so taken. In the event that all the leased premises amounting to twenty-five (25%) percent or more of the square foot of the Premises is taken, or the building is rendered unsuitable for the use permitted under this Lease, Harris shall have the right either to cancel this Lease and declare the same null and void or to continue in possession of the remainder of the leased premises under the terms herein provided, except that the rental shall be reduced in proportion to the amount of the premises taken.

Harris shall be entitled to the award made for any taking, condemnation or conveyance to the extent used by Harris for repairs or renovations under this Section. Otherwise, the City shall be entitled to the entire award for the land and Harris shall be entitled to the entire award as to the building (after all necessary demolition and removal of debris which shall be paid from such award).

15. <u>RESTRICTION AGAINST ASSIGNMENT AND SUBLETTING</u>. Harris shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein, or sublet said premises or any parts thereof or permit the use of same or any part thereof by anyone other than Harris, without the prior written consent of City, which consent shall not be unreasonably withheld. Consent by City to any assignment or transfer of interest under this Lease or subletting of said leased premises or any part thereof shall be limited to the instance stated in such written consent and shall not constitute a release, waiver or consent to any other assignment, transfer of interest, or subletting.

16. <u>EVENTS OF DEFAULT; RIGHTS OF CITY UPON DEFAULT</u>. In the event Harris shall fail to make payment of the rental or any other item required of Harris within ten (10) days after the due date of same, or if Harris fails to cure its breach of a non-payment covenant within thirty (30) days after receipt of written notice of breach from City, Harris shall be in default provided however, that if such default is of a nature that it cannot be reasonably cured within such thirty (30) day period, then Harris shall have such time as it reasonably required to sure such default, provided that Harris promptly commences to cure such default and diligently pursues such cure to completion In addition, Harris shall be in default if it abandons the leased premises, becomes insolvent, makes an assignment for the benefits of its creditors, has a receiver or trustee appointed for its property as a result of its insolvency of threatened insolvency, or is subject to a levy of execution or attachment or other taking of its property, assets or leasehold interest in the leased premises by process of law or otherwise in satisfaction of any judgment or claim. In the event of default that is not cured, City may, at its option, terminate this lease and all the rights of Harris hereunder and thereupon City shall have the right to enter the leased premises and remove all persons and property there from, or City may, without terminating this lease, enter into leased premises as the agent of the Harris and re-let the leased premises with or without any furniture, fixtures, or property of Harris or make any repairs, changes, alterations, or additions in or to said leased premises that may be necessary or convenient, all for the account of Harris. In addition to the past due rentals and charges, Harris hereby agrees to pay interest on the past due sum in the amount of eighteen percent (18%) per annum, plus all reasonable attorneys' fees and expenses and court cost and expenses, including interest, incurred by City in the process of eviction of collections.

17. EVENTS OF DEFAULT; RIGHTS OF HARRIS UPON DEFAULT. In the event City fails to cure its breach of a covenant within thirty (30) days after receipt of written notice of breach from Harris, City shall be in default. In the event of default that is not cured, Harris may terminate this lease. This remedy shall not be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy existing at law or in equity.

18. COVENANT OF TITLE AND QUIET POSSESSION, City covenants that it has the right to make this lease for the term aforesaid and that it will put Harris into possession of the leased premises for the full term of this lease. City warrants that Harris, upon making the payments and performing and keeping the other covenants and agreements of this Lease on its part to be kept and performed, shall have quiet and peaceful possession of the leased premises during the term of this Lease and any extension thereof.

19. RIGHT TO EXAMINE PREMISES. Harris agrees to allow City, its agents and representatives, free access to the leased premises during reasonable hours for the purpose of examining same; and during the period of three (3) months previous to the expiration of the term of this Lease or during the period of three (3) months prior to any renewal hereof, to exhibit same to prospective tenants.

20. HOLDING OVER. It is hereby agreed that in the event of Harris holding over after the termination of this Lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary, and Harris shall pay to City a daily occupancy charge equal to five (5%) percent of the monthly rental under Paragraph 3 (plus all other charges payable by Harris under this Lease) for each day from the expiration or termination of this Lease until the date demised premises are delivered to City in the condition required herein, and City's right to damages for such illegal occupancy still survive.

21. PROPER NOTICES. All notices required or permitted under this Lease shall be deemed to be properly served if sent by registered mail to the last address previously furnished by the parties hereto. Until hereafter changed by notice in writing, notices shall be sent to City at City Manager, City of Muskegon, 933 Terrace, Muskegon, Michigan, and to Harris at 950 West Norton, Muskegon, Michigan 49441.

22. WAIVER. The failure of City to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any of one or more instances, shall not be construed as a waiver or relinquishment of any such covenants, conditions or options, but the same shall be and remain in full force and effect. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any preceding breach by Harris of any term, covenant or condition of this Lease, other than the failure of Harris to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by City, unless such waiver is in writing by City.

23. ENTIRE AGREEMENT. This Lease and the exhibits and addenda, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between City and Harris concerning the lease of the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between City and Harris other than is set forth herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon City or Harris unless reduced to writing and signed by the parties hereto.

24. PERSONAL PROPERTY, MERCHANDISE, FURNITURE AND FIXTURES. Any and all personal property, merchandise, furniture or fixtures placed in or moved upon the leased premises by Harris shall be at the sole risk of Harris. City shall not be liable for damages to a newly constructed building, furniture, fixtures or equipment.

25. PARTIAL INVALIDITY. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

26. HAZARDOUS SUBSTANCES. Harris shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on or in the Premises by Harris, Harris's agents, employees, contractors, or invitees. If Hazardous Substances are used, stored, generated, or disposed of on or in the Premises, or if the Premises become contaminated in any manner for which Harris is legally liable, Harris shall indemnify and hold harmless the City from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, a decrease in value of the premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term, and as a result of that contamination by Harris.

27. TITLE III. Notwithstanding any other provision of this Lease, the parties hereby agree that the premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Harris to comply with any and all provisions of the ADA, and such compliance may be required to operate the demised premises. Harris further agrees to indemnify and hold the City harmless against any claims which may arise out of Harris's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims.

28. RECORDING OF MEMORANDUM. Upon the execution hereof, City and Harris shall execute and cause to be recorded with the Muskegon County Register of Deeds a memorandum hereof in form reasonably acceptable to City. All recording charges and any stamp or similar tax shall be paid by Harris. Upon the expiration or earlier termination of this Lease, City and Harris shall cooperate to execute a recordable termination of same.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be signed in their respective names by their respective officers and sealed with their respective seals the day and year first above written.

LESSOR: City of Muskegon	**LESSEE: 1601 Beach, LLC**
By:____________________________	**By:**_________________________
Title:___________________________	**By:**_________________________
Date:___________________________	**Date:**________________________

EXHIBIT A

PROPERTY DESCRIPTION OR MAP

EXHIBIT B

SITE DEVELOPMENT

DEVELOPMENT AGREEMENT

This Development Agreement is made as of __________ ____, 2013, between the CITY OF MUSKEGON, a Michigan municipal corporation (the "City"), and 1601 Beach, LLC, a Michigan limited liability company, whose business address is 950 W. Norton, Muskegon, Michigan 49440 ("HARRIS").

RECITALS

A. City owns property commonly referred to as Pere Marquette Beach and the Ovals, which is located between Beach Street and the edge of Lake Michigan and depicted in the aerial map attached as Exhibit A.

B. City's interest in the property located at Pere Marquette Beach and the Ovals is subject to a number of restrictions, including being prohibited from selling the property.

C. Harris is interested in leasing a portion of Pere Marquette Park ("Leased Property") depicted in the aerial map attached as Exhibit B and more specifically provided in the legal description attached as Exhibit C.

D. Harris' plan is to demolish the existing building on the leased property and construct a variety of buildings depicted in the site plan attached as Exhibit D.

E. Harris desires a Right of First Refusal concerning adjacent property depicted in the aerial map attached as Exhibit E. City is willing to grant a Right of First Refusal, subject to conditions as provided in the attached Right of First Refusal attached as Exhibit F.

TERMS AND CONDITIONS

Therefore, in exchange for the consideration in and referred to by this Agreement, the parties agree as follows:

1. HARRIS OBLIGATIONS PRIOR TO EXECUTION OF THE PROPOSED LEASE.

1.1 Survey.

Upon execution of this Development Agreement, Harris shall order and pay for a survey. The survey shall include the property subject to the Lease attached as Exhibit G and the property subject to the Right of First Refusal attached as Exhibit F.

1.2 Financing Improvements on Leased Property.

Harris agrees to provide the accepted bid to construct the improvements shown on the site plan attached as Exhibit D. Harris shall provide to the City Manager, under a promise of confidentiality if possible, a commitment letter from a financial institution or other verifiable proof of financial ability to make the improvements. The acceptability of proof of financial ability is solely within the purview of the City Manager.

1.3 Planning Commission Approval.

Harris shall submit to City an application for a site plan and special use permit if necessary in City's sole discretion for review by the City of Muskegon Planning Commission and pay such fee as is required. The special use permit and site plan review shall include the proposed restaurant, banquet facility and yogurt stand. The special use permit and site plan review shall be limited to the proposed improvements for the property subject to the Lease.

1.4 State Approval.

City and Harris acknowledge that the property subject to the proposed Lease and the property subject to a proposed Option is located between an area which may be a protected critical dune and the shores of Lake Michigan. The parties acknowledge that there may be State of Michigan regulations, including but not limited to Rules and Regulations administered by the Department of Natural Resources and Department of Environmental Quality. Harris shall obtain written confirmation from appropriate State Agencies that the development contemplated in Exhibit D will be permitted by the State of Michigan and provide such written confirmation to the City.

1.5 Liquor License.

Harris shall acquire one or more Class C liquor licenses, or other liquor license(s), necessary to serve beer, wine, and alcoholic beverages on site. The liquor license(s) must be applicable to both the restaurant and banquet hall. In addition to the Class C liquor licenses, Harris may obtain an SDM liquor license.

1.6. Tax Abatement.

Harris may, but is not obligated to seek tax abatement improvements shown on the site plan attached as Exhibit D. If a tax abatement is sought, City shall process the request in its normal course of business, including payment of any fees, but is not obligated to grant any tax abatement.

1.7 **Environmental Testing.**

Harris shall have the right to complete whatever inspections it deems necessary to determine if the property is polluted or contaminated.

2. CITY OBLIGATIONS PRIOR TO EXECUTION OF THE PROPOSED LEASE.

2.1 Title Insurance.

City shall order and pay for a Title Insurance Commitment, back to the point that the City took title and any other covenants, restrictions and provisions, including for the property subject to the proposed Lease and the property subject to the proposed Right of First Refusal. City's obligation to order the Commitment is subject to Harris providing the legal description of the property.

2.2 Zoning Classification.

City warrants that the property subject to the proposed Lease and the proposed Right of First Refusal is zoned OSR Open Space Recreation District. Permitted Uses, either by right or Special Land Use Permit are those specified in attached Exhibit H. City warrants that it shall not alter the Zoning classification or modify the Principal Uses Permitted or Special Land Uses Permitted after execution of this Development Agreement and prior to the execution of the proposed Lease.

2.3 Property Ownership.

City represents and Harris acknowledges that the property subject to the proposed Lease and the proposed Right of First Refusal have been designated as a "Charter Park", which may not be sold, transferred, mortgage or conveyed by the City except with the approval of a majority of the electors voting at an election held in the City.

2.4 Access to Property.

Harris shall be provided non-exclusive access to the proposed property. Harris acknowledges that others presently have access to and use the property. Harris, in its exercise of reviewing the proposed land and undertaking its necessary due diligence, shall minimizes the disruption of others use. Harris, or its agents, shall take no action which could result in injury to other users of the property.

3. GROUND LEASE.

3.1 Upon satisfaction of Harris' obligations in Paragraph 1, Harris and City desire to enter into a multi-year Ground Lease, a copy of which is attached as Exhibit G.

3.2 **Phased Development.**

HARRIS and City acknowledge that the Improvements contemplated in the Site Plan attached as Exhibit D may not be able to be constructed simultaneously. The Improvements will be completed in the following order: the proposed restaurant, then the banquet facility, then the yogurt stand. Harris reserves the right to construct all the Improvements simultaneously.

The construction of the planned improvements by Harris shall be phased as follows:

3.2.1 The initial phase shall be the demolition/renovation of the existing building and then the construction of the proposed restaurant. Harris shall have 30 days from approval of the site plan to submit construction drawings for the restaurant. Harris shall complete the restaurant within the time periods set forth in the City's ordinances for approval of site plans.

3.2.2 If not constructed simultaneously with the proposed restaurant, the banquet facility and yogurt stand shall be completed within the time periods set forth in the City's ordinances for approval of site plans.

Completion shall be defined as issuance of an unconditional Certificate of Compliance.

3.3 Other Vendors.

Pursuant to License Agreements, City has granted to various entities the right to sell products in the City, including at Pere Marquette Beach and the Ovals. The Licenses are effective from January 1, 2013 through December 31, 2013. Harris' execution of the proposed Lease does not affect the previously issued Licenses. To the extent that City has already authorized a location for a vendor, the Lease does not affect that License and Harris agrees not to interfere with such. A list of vendors and locations are attached as Exhibit I. City commits that, for other than special events, any future License to sell food or drink products shall be limited to areas which are not subject to the proposed Lease or Option.

3.4 Limited Access.

As part of the site plan review process, City and Harris shall mutually agree as to what facilities will have limited access, (i.e., the use of restroom facilities in the restaurant may be limited to restaurant customers, etc). Such agreement may be added to the Lease at the request of either party.

4. OPTION AGREEMENT

4.1 Possible Future Development.

Except as limited by Paragraph 3.3, Harris and City acknowledge that the development contemplated in the Site plan attached as Exhibit D may spur a desire by private entities to develop the area surrounding the area to be leased by Harris pursuant to Exhibit G. City is unwilling to commit at this point to lease any additional property to Harris or any other party for development. City is willing to provide limited assurances that Harris may be able to expand its development under the terms and conditions set forth in a separate Option Agreement.

5. ENVIRONMENTAL COMPLIANCE AND OBLIGATIONS.

5.1 Compliance with Environmental Regulations. Harris shall fully comply with all statutes, regulations, or other applicable requirements imposed by any federal, state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Harris may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Harris shall not cause, permit or suffer the existence or commission by Harris, its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

5.2 Hazardous Material; Environmental Liens. Harris shall not cause, permit or suffer any "hazardous material" or "hazardous substance" (as defined by applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Harris, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of City.

5.3 Obligation to Remediate. Harris shall, upon demand of City, and at its sole cost and expense, promptly take all actions to remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision which remediation is necessitated from, or attributable to, (i) the presence upon, about, or beneath the Property of any "hazardous material" or "hazardous substances" or (ii) any violation of Environmental Requirements, if such presence or violation is caused by the activities or operations conducted by Harris upon the Property. Harris agrees to allow entry upon the Property by City, or agents, contractors or employees of City for purposes of conducting environmental audits and/or other tests for the purpose of determining the impact of Harris's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof. In the event that HARRIS performs any such environmental audit and/or test on its own behalf, it shall promptly provide to City full and complete copies of any results and/or reports that are generated in connection with the above activities.

6. TERMINATION OR EXTENSION OF THIS DEVELOPMENT AGREEMENT.

City and Harris agree that if Paragraph 1 is not satisfied and the proposed Lease is not executed by October 1, 2013, the parties shall review the status of the contingencies set forth in Paragraph 1 to determine if Harris has been diligently working toward satisfying those contingencies. The parties acknowledge one or more of the contingencies require approval by governmental bodies that Harris has no control over. If Harris is in good faith working toward satisfaction of the contingencies, the termination date of this Development Agreement shall be extended until such time as all governmental agencies have issued its respective opinions on the issues being presented by Harris. If Harris is not diligently working toward satisfaction of the contingencies, this Development Agreement shall become null and void, along with the proposed Option Agreement.

7. INTERPRETATION. This is the entire agreement, including attachments, between the parties as to its subject. It shall not be amended or modified except in writing signed by the parties. It shall not be affected by any course of dealing and the waiver of any breach shall not constitute a waiver of any subsequent breach of the same or any other provision. This Agreement shall be interpreted and construed in accordance with Michigan law and the parties agree to jurisdiction and venue within the courts for the County of Muskegon.

8. BINDING. This Agreement and the rights and obligations under this Agreement are not assignable and not transferable without the consent of the other parties. It shall, however, be binding upon any successors or permitted assigns of the parties. Harris and City have negotiated together to reach the terms of this Development Agreement, have participated in the drafting of this Agreement, acknowledge that this product is a joint effort of both parties.

9. WAIVER. One or more waivers by any party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

10. NOTICE. Any notice provided for herein or given pursuant to this Agreement, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by personal delivery to the parties as follows:

To Muskegon:

CITY OF MUSKEGON
933 Terrace, P.O. Box 536
Muskegon, MI 49443-0536
Attn: City Manager

To HARRIS:

1601 BEACH, LLC
950 W. Norton
Muskegon, MI 49441

11. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

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

CITY OF MUSKEGON

By:____________________________
Stephen Gawron, Mayor

Attest:

____
Ann Marie Cummings, City Clerk

1601 Beach, LLC
By:____________________________
____________________, Its _________

EXHIBIT A

AERIAL OF PERE MARQUETTE BEACH AND OVALS

EXHIBIT B

AERIAL OF PROPERTY SUBJECT TO PROPOSED LEASE

EXHIBIT C

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO PROPOSED LEASE
(To be Provided after execution)

EXHIBIT D

CONCEPTUAL SITE LAYOUT

EXHIBIT E

AERIAL FO PROPERTY SUBJECT TO RIGHT OF FIRST REFUSAL

EXHIBIT F

RIGHT OF FIRST REFUSAL

EXHIBIT G

PROPOSED LEASE

EXHIBIT H

CITY OF MUSKEGON ZONING ORDINANCE, ARTICLE XVII

EXHIBIT I

LIST OF APPROVED VENDORS AT PERE MARQUETTE AND OVALS