

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 26, 2018 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes City Clerk
 - B. Kitchen 242 Agreement City Clerk
 - C. Toro Groundsmaster Mower DPW/Parks Department
 - D. Ordinance Amendment – Minor in Possession Public Safety
 - E. Sale of Property for Industrial Development Planning & Economic Development
 - F. Evergreen Mausoleum Roof Replacement Department of Public Works
 - G. Roof Replacement – Water Filtration Plant, Sections #5 and #12
Department of Public Works/WFP
 - H. Walls and Windows Restoration – Section #5 Department of Public Works/WFP
 - I. Amendment to Zoning Ordinance – Fences Planning & Economic Development
 - J. Amendment to Zoning Ordinance – Accessory Structures Planning & Economic Development
 - K. Water Rate Increase Finance
 - L. Sanitation Service Fee Resolution Finance

M. Sewer Rate Adjustment Finance

N. Approval of Neighborhood Enterprise Zone Certificate for 337 Terrace Point Circle (Unit #7) Planning & Economic Development

O. Engineering Services – Pilot Drinking Water Community Water Supply Grant Agreement Department of Public Works

☐ **PUBLIC HEARINGS:**

A. Water Collection System Upgrades Department of Public Works

☐ **COMMUNICATIONS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. Concurrence with Housing Board of Appeal Notice and Order to Demolish
Public Safety

554 Oak Street – Garage Structure

839 Turner Avenue

☐ **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:**

A. Discuss City Manager Evaluation

☐ **ADJOURNMENT:**

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

memo

City of Muskegon

To: Mayor and City Commissioners
From: Frank Peterson, City Manager
Date: June 21, 2018
Re: Commission Meeting Update

We have a pretty full agenda this week. This memo should act as a quick reference/outline to the action items requested by staff at this week's meeting:

Under Consent:

- A. We are seeking approval the minutes from the June 11, 2018 Work Session and the June 12, 2018 Regular Session of the City Commission.
- B. We are seeking approval to renew the Kitchen 242 Management Agreement with Renae Hesselink. The current agreement expires June 30, 2018 – the extension will expire June 30, 2019. There are no changes to any other terms/conditions of the management agreement.
- C. We are seeking approval to purchase one Toro Groundsmaster lawnmower. The zero-turn mower will feature a 72-inch recycler mowing deck. The lowest responsible bidder was Spartan Distributors: \$22,086.90.
- D. We are seeking an amendment to our ordinance governing Minors in Possession of Alcohol. This amendment is in response to a change in state law and a subsequent request from the local court system to update our ordinance. These changes will eliminate minor conflict(s) between local ordinance and state law.
- E. Approval to enter into a sales agreement with Grooters Development to sell 22 acres of land at 2420 Remembrance Road and up to 15 acres of land at 2359 East Keating, 2355 East Keating, and 2285 Black Creek Road. The 22 acres at 2420 Remembrance Road will be sold at a rate of \$15,000/acre. The additional 15 acres will be sold at \$9,000/acre. The approximately \$465,000 sales proceeds will benefit the Public Improvement Fund. The developer will use the land to construct nearly 500,000 square feet of industrial space to accommodate KL Outdoor's growing distribution needs.
- F. We are seeking approval to expend \$94,500 to replace the roof at the Evergreen Cemetery mausoleum. Ostrander Roofing was the lowest responsible bidder.
- G. We are seeking approval to expend \$212,885 to replace sections of roof at the water filtration plant. Bob's Roofing was the lowest responsible bidder.
- H. We are seeking approval to expend \$29,670 to restore walls and windows at the filtration plant. Kent Companies was the lowest responsible bidder.

-
- I. We are seeking approval to amend the zoning ordinance as it relates to fences. Specifically, we are seeking approval to allow 6-foot fences in the secondary front yard of a home that sits on a corner lot. Currently, we treat corner lots as having two front yards – essentially eliminating their ability to install privacy fencing in what would normally be their “side” yard. This change, which was recommended by the Planning Commission, will be a benefit to corner-lot property owners.
 - J. We are seeking approval to amend the zoning ordinance as it relates to accessory structures. Specifically, we are seeking approval to allow accessory structures in the secondary front yard of a home that sits on a corner lot. Currently, we treat corner lots as having two front yards – essentially eliminating their ability to install an accessory structure in what would normally be their “side” or “rear” yard. This change, which was recommended by the Planning Commission, will be a benefit to corner-lot property owners.
 - K. In an effort to meet the capital investment needs of the water fund, we are requesting a 4% increase to the water rates in each of the next four rate cycles. Water rates were last raised in 2013. The addition of Fruitport and Norton Shores as customers has helped avoid increases in the past three years, and likely has helped keep the increases lower than what would otherwise be necessary. However, our filtration plant does have some major long-term capital needs. Additionally, our distribution network (pipes in the ground throughout the city) has significant needs as well – and the Fruitport/Norton Shores contract does not directly provide dollars to maintain this infrastructure because their customers do not utilize it. Much like our street infrastructure, if we defer/avoid these maintenance items, they will become more expensive to undertake and more difficult to fund with modest rate increases.
 - L. Staff is seeking approval to extend the \$1.20 monthly sanitation fee to city sanitation customers. The \$198,000 that this fee generates will offset the difference in revenue from the sanitation millage and the expenses charged by Republic Waste.
 - M. Staff is seeking a sewer rate adjustment to help meet capital needs in the wastewater fund. Over the past couple decades, the wastewater fund has lost some significant end-users (like SAPPI Fine Paper). Additionally, many industrial end users are using less water. This has left our large sewer infrastructure in the position of having significantly less “flow” to pay for the infrastructure and treatment costs. The City Commission has already raised rates nearly every year since 2014. As part of an in-depth asset management program, we utilized a group of consultants to review sewer-related infrastructure needs and develop both a replacement schedule and a rate schedule that would work in tandem to upgrade our infrastructure as needed. Accordingly, we are seeking a rate increase equal to 3% for the coming fiscal year.
 - N. Staff is asking the Commission to issue an Enterprise Zone Certificate for 337 Terrace Point Circle. The construction cost of the home is estimated at \$350,000.
 - O. Staff is seeking approval to enter into an agreement with Prein & Newhof to provide engineering service to the city as part of a grant received from the Michigan DEQ. The \$600,000 grant will cover construction and engineering costs. Engineering costs are estimated at \$113,000.

Under Public Hearings, we will take public comments on the city’s plan to undertake necessary improvements to the wastewater collection system. Over five years, we expect the improvements to equal \$24 Million. In the first year, we expect those costs to equal \$8 Million.

Under Bew Business, we are seeking concurrence with the Housing Board of Appeals' decision to demolish a garage at 554 Oak Street and a house at 839 Turner Ave. Staff is recommending concurrence.

Under Closed Session, we will be discussing the City Manager's Performance Evaluation.

Let me know if you have any questions or need clarification on anything. I'm out of the office the remainder of the week, but you can reach me via email or cell phone.

Date: June 22, 2018
To: Honorable Mayor and City Commissioners
From: Director Jeffrey Lewis
RE: Recognition of Spring 2018 Citizen's Academy Graduates

SUMMARY OF REQUEST:

RESOLUTION
RECOGNITION OF SPRING 2018 CITIZEN'S ACADEMY GRADUATES

WHEREAS, the City Commission desires to provide citizens with a better understanding of the functions of law enforcement, dispelling misconceptions and increasing positive communication between citizens and police; and

WHEREAS, it is the desire of the Muskegon City Commission to encourage cooperation between the public and law enforcement to positively impact our communities;

NOW, THEREFORE, BE IT RESOLVED, that the Muskegon City Commission hereby congratulates and recognizes:

Dorothy Blanchette	John McGee, Jr.
Amanda Grover	Julia Miller
Michael Haueisen	Donald Strouse
Thomas Hoisington, Jr.	LaShaun Turner
Savanna Huff	Jeremy Wagenmaker
Cindi Kirchenbauer	Tonesia Williams
Jackline Knight	Lisa Wright
Timothy Kraus	

for their faithful attendance, completion and graduation from the 10 week Spring 2018 Citizen's Police Academy.

Given on behalf of the Muskegon City Commission this 26th day of June, 2018.

Stephen J. Gawron, Mayor

STAFF RECOMMENDATION:

Approve - Director Jeffrey Lewis



RESOLUTION
RECOGNITION OF SPRING 2018 CITIZEN'S ACADEMY GRADUATES

WHEREAS, the City Commission desires to provide citizens with a better understanding of the functions of law enforcement, dispelling misconceptions and increasing positive communication between citizens and police; and

WHEREAS, it is the desire of the Muskegon City Commission to encourage cooperation between the public and law enforcement to positively impact our communities;

NOW, THEREFORE, BE IT RESOLVED, that the Muskegon City Commission hereby congratulates and recognizes:

Dorothy Blanchette
Amanda Grover
Michael Haueisen
Thomas Hoisington, Jr.
Savanna Huff
Cindi Kirchenbauer
Jackline Knight
Timothy Kraus

John McGee, Jr.
Julia Miller
Donald Strouse
LaShaun Turner
Jeremy Wagenmaker
Tonesia Williams
Lisa Wright

for their faithful attendance, completion and graduation from the 10 week
Spring 2018 Citizen's Police Academy

Given on behalf of the Muskegon City Commission this 26th day of June, 2018.

Stephen J. Gawron, Mayor

Date: June 20, 2018
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the June 11, 2018 Worksession and June 12, 2018 Regular Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, June 11, 2018
5:37 p.m.
City Commission Chambers

MINUTES

2018- 40

Present: Johnson, Hood (arrived at 6:07 pm), Turnquist, Gawron, Warren, and German.
Absent: Rinsema-Sybenga

1. Jon Rooks Project

The City Manager gave an explanation regarding the item placed on the June 12, 2018 agenda.

2. 2018/2019 Proposed Budget

The City Manager gave an overview of the proposed budget. Commission and staff discussed budget in detail. Questions were asked by Commissioners and answered by the City Manager and staff. Lengthy discussions took place on several areas of the budget including the LC Walker Arena and street funding.

3. Any Other Business

Public Safety Director Jeff Lewis was asked to give further clarification on the policies placed on the Commission Meeting for June 12, 2018.

The City Manager answered questions regarding smart zones.

Leigh Ann gave an update on wilt oak.

Adjournment

The Worksession meeting adjourned at 9:00 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 12, 2018 @ 5:30 P.M.

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

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, June 12, 2018. Pastor Matt Sharpe, Evanston Avenue Baptist, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

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

Absent: Commissioner Dan Rinsema-Sybenga

2018-41 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the May 22, 2018 Regular meeting.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the minutes.

B. Professional Services Agreement City Clerk

SUMMARY OF REQUEST: To approve a professional services agreement for the City Clerk to provide assistance in election administration duties to the City of Roosevelt Park until a new clerk is selected.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the Professional Services Agreement between the City Clerk and the City of Roosevelt Park.

C. 2018-2019 MML Membership Dues City Clerk

SUMMARY OF REQUEST: Approval to pay the 2018-2019 MML dues in the

amount of \$9,967.00. This is an increase of \$204.

FINANCIAL IMPACT:	MML Dues	\$9061
	Legal Defense Fund	<u>\$ 906</u>
	Total	\$9967

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval

E. Terrace Point Sidewalk DPW

SUMMARY OF REQUEST: Participate in the funding for adding a 6 foot wide sidewalk to the northwest side of Terrace Point Road from Shoreline Inn and Marina to Shoreline Drive. There is currently no sidewalk to connect pedestrians between downtown and the commercial hub on the waterfront. The City and Parkland Development will each pay half the cost.

FINANCIAL IMPACT: \$22,356

BUDGET ACTION REQUIRED: The project will be added to the non-motorized line in the street funds as part of the 4th quarter reforecast in the 2017/18 budget.

STAFF RECOMMENDATION: Approve the expenditure of street funds.

G. Authorization to Sign Community Housing Development Organization (CHDO) Agreements CNS

SUMMARY OF REQUEST: To direct the Mayor and City Clerk to sign the approve agreement for the City's CHDO reserve and operating funds for Bethany Housing Ministries, Inc. doing business as Community enCompass. Community enCompass has proposed to rehabilitate a single-family home located at 34 E. Isabella Avenue in the McLaughlin Neighborhood. The total budget for this project is \$163,600. Community enCompass has requested \$66,650.00 in HOME funds to assist in the completion of this home. This is a continuing partnership between the City and Community enCompass in providing decent affordable homes within the City of Muskegon.

After the Mayor and Clerk sign the contracts, the CNS office will retain one copy of our files and a copy will be supplied to Community enCompass (Bethany Housing Ministries) for their records.

FINANCIAL IMPACT: Funding will be allocated from the HOME program CHDO Reserve and Operating Budgets.

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To prepare a resolution and direct Mayor and Clerk to sign agreements.

I. CRC Recommendations for District Library Board City Clerk

SUMMARY OF REQUEST: To accept with recommendation of the Community Relations Committee to reappoint Clayton Hardiman to the District Library Board.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To accept the recommendation of the Community Relations Committee and reappoint Clayton Hardiman to the District Library Board.

COMMITTEE RECOMMENDATION: Reappoint Clayton Hardiman to the District Library Board.

Motion by Commissioner Warren, second by Vice Mayor Hood, to approve the consent agenda as presented, except items D, F, H, and J.

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

Nays: None

MOTION PASSES

2018-42 ITEMS REMOVED FROM CONSENT AGENDA:

D. Request to Rezone 731 Yuba St, 205 E Muskegon Ave, 287 E Muskegon Ave and 225 Eastern Ave – SECOND READING Planning & Economic Development

SUMMARY OF REQUEST: Request to rezone these properties from B-4, General Business I-1, Light Industrial, by Citiparc, LLC. The applicant is seeking the rezoning in order to develop a food processing center.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff recommend approval of the rezonings.

COMMITTEE RECOMMENDATION: The Planning Commission voted in favor (5-0), with 4 members absent, recommending approval of the proposed zoning changes at their May 21, 2018 meeting. Michalski, Hood, Lardon, and Hovey-Wright were absent.

Motion by Commissioner German, second by Commissioner Warren, to approve the rezonings.

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

Nays: None

MOTION PASSES

F. 2018 CDBG/HOME Budget Recommendations CNS

SUMMARY OF REQUEST: To approve the 2018 Budget recommendations for CDBG/HOME Allocations.

FINANCIAL IMPACT: To request the Release of Funds from HUD for 2018 CDBG/HOME Allocations.

BUDGET ACTION REQUIRED: To approve the CNS budget for the 2018 CDBG/HOME Allocation.

STAFF RECOMMENDATION: To approve the 2018 CDBG and HOME Budgets for Release of Funds and Environmental Review Process.

COMMITTEE RECOMMENDATION: The Citizen's District Council has made their recommendations.

Motion by Commissioner Johnson, second by Commissioner Warren, to approve the 2018 CDBG and HOME Budgets, as recommended by the Citizens District Council, for release of funds and environmental review process.

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

Nays: None

MOTION PASSES

H. Convention Center Traffic Study Engineering

SUMMARY OF REQUEST: Participate in the funding of a traffic study for the area of downtown impacted by the future convention center. The study will review traffic operations for existing and various proposed conditions. Funding will be split between the city and county per the agreements reached for other studies and design.

FINANCIAL IMPACT: The City will fund the study as part of the design of the convention center and be repaid by the county room tax

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the expenditure of public improvement funds.

Motion by Commissioner German, second by Commissioner Warren, to approve the temporary expenditure of public improvement funds.

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

Nays: None

MOTION PASSES

J. Disability Pride Day Proclamation City Clerk

SUMMARY OF REQUEST: Adopt a proclamation proclaiming June 16, Disability

Pride Day 2018.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the proclamation.

Motion by Commissioner Johnson, second by Commissioner German, to approve the proclamation.

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

Nays: None

MOTION PASSES

2018-43 PUBLIC HEARINGS:

A. Transmittal of 2018-19 Proposed Budget City Manager

SUMMARY OF REQUEST: At this time staff is transmitting to the City Commission the proposed budget for fiscal year 2018-19 which starts July 1, 2018. Both hardcopy and electronic versions of the budget have been distributed to Commissioners. Additionally, the budget is available for public inspection on the City's website and at the City Clerk's office.

The proposed budget was reviewed in detail with staff at the June 11 work session. A public hearing on the budget is being held at the regular Commission Meeting. City ordinance requires that the budget be adopted by the Commission on or before the second Commission meeting in June.

FINANCIAL IMPACT: The budget is the City's financial plan for the coming fiscal year.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: Approval of the proposed budget for fiscal year 2018-19.

PUBLIC HEARING COMMENCED: The following public comments were received:

Lowell Kirksey, 1329 Fourth Street – concerned about lack of funding for youth programs.

Motion by Commissioner Johnson, second by Vice Mayor Hood, to close the public hearing and adopt the proposed budget for fiscal year 2018-19.

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

Nays: None

MOTION PASSES

2018-44 NEW BUSINESS:

A. Police Department Police Manual Update/Revision Public Safety

SUMMARY OF REQUEST: The Director of Public Safety requests that the Commission authorize the amount of \$29,242 for the department contract with Lexipol, LLC to update/revise the department's policy and procedure manual. Our current policy manual was last updated in 2005, and no longer reflects up to date standards and best practices consistent with current case law. Lexipol will provide the department with up to date policies specific to the laws and practices of Michigan, which continue to reflect our values and policing philosophy. As legislation or case law changes, Lexipol will provide timely updates to reflect this change. MPD officers will also utilize daily, scenario based training bulletins to reinforce our policies.

FINANCIAL IMPACT: None – GF Budgeted

BUDGET ACTION REQUIRED: None – Funded by Drug Forfeiture Fund

STAFF RECOMMENDATION: Staff recommends approval to update/revise the Police Department's policy manual.

Motion by Commissioner Warren, second by Commissioner Johnson, to approve the update/revision to the Police Department's policy manual.

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

Nays: None

MOTION PASSES

B. Convention Center Development Agreement City Manager

SUMMARY OF REQUEST: City staff is requesting approval of a development agreement involving the City of Muskegon, Muskegon County, and Parkland Properties. The agreement will guide the development of the proposed convention center and outline the commitments of all three parties.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None at this time.

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

Motion by Commissioner Johnson, second by Commissioner German, to approve the development agreement and authorize the Mayor and Clerk to sign.

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

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner Warren asked for and received an update on McGraft Park and the concern regarding Oak Wilt and disc golf at the park.

City Manager, Frank Peterson, gave an update on the fire department.

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 7:25 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC, City Clerk

Date: June 20, 2018
To: Honorable Mayor and City Commissioners
From: City Clerk
RE: Kitchen 242 Contract Renewal

SUMMARY OF REQUEST: Our Kitchen Manager's contract is set to expire on June 30th for Kitchen 242. We are requesting to extend Renae Hesselink's contract through June 30, 2019 with no changes.

FINANCIAL IMPACT: Continuation of the current agreement.

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To extend Renae Hesselink's contract through June 30, 2019.

Date: June 18, 2018

To: Honorable Mayor and City Commissioners

From: Parks Department

RE: Toro Groundsmaster Mower

SUMMARY OF REQUEST:

The Parks Department is requesting permission to purchase one (1) Toro 3280 4WD Groundsmaster mower with 72" recycler mowing deck from Spartan Distributors, the lowest qualified bidder. The cost for the mower is \$22,086.90.

FINANCIAL IMPACT:

\$22,086.90

BUDGET ACTION REQUIRED:

None. The amount was budgeted in the 2018/2019 Parks Budget.

STAFF RECOMMENDATION:

Authorize staff to purchase one (1) Toro Groundsmaster 3280 4WD mower with 72" recycler mowing deck from Spartan Distributors, the lowest qualified bidder.

June 7, 2018

City of Muskegon
ATTN: Burnadette Young
1350 Keating
Muskegon, MI 49442

487 W Division Street
PO Box 246
Spartan, MI 49345
616.887.7301
Fax: 616.887.6288

1050 Opdyke Road
Auburn Hills, MI 48326
248.373.8800
Fax: 248.373.8899

Dear Burnadette,

We are pleased to provide a quote on the following equipment:

(1) Toro Groundsmaster 3280 4WD (#30345)	\$ 22,086.90
▪ 72" Guardian Recycler Deck w/ 4 castors ▪ Air Ride Seat Suspension (#30313) ▪ Milsco Seat (#30398) ▪ Armrest Kit (#30707) ▪ Armrest Adapter Kit (#109-9687) ▪ 8" Foam Castor Wheel	

Pricing is firm for 30 days.

DELIVERY: As requested

TERMS: Net 30 days

Thank you for your interest in our line of equipment. If you have any questions please feel free to call me at 800-822-2216.

Sincerely,

A.J. Rings
Commercial Division



Steve Stewart, SCPS
Operation Manager
911 Tower Road
Mundelein, IL 60060
Cell (630) 284-8496
Fax (847) 678-5511
ss Stewart@reinders.com

Acct #: #N/A
City of Muskegon
1350 Keating
Muskegon, MI 49442

Quote ID	Quotes Good until June 30, 2018
Quote Date 6/7/18	Tax Not Included In Quote

Attn: Burnadette Young,

PRICE QUOTATION

<i>Qty</i>	<i>Model #</i>	<i>Description</i>	<i>Total</i>
1	30345	GM 3280-D 4WD	\$24,958.20
1	31335	72" Guardian Recycler deck with 4 castor wheels	
2	93-5974	Foam Filled 8" Caster Wheel	
2	24-5790-01	Rear Weight 35 lb.	
4	325-8	Screw	
4	3253-7	Washer Lock	
1	30313	Air Ride Seat Suspension	
1	30398	Milsco Seat	
1	30707	Armrests	
1	108-9687	Armrest Adaptor Kit	

Delivery Charge \$560.00
\$25,518.20

CENTURY *Equipment*

QUOTATION

Date 06/07/18

For: City of Muskegon
1350 Keating

Muskegon MI 49442

From: Cleveland Office located at:
2266 E Aurora Road
Twinsburg, OH 44087
800-346-0066

Attn: Burnadette Young

SalesRep:

Qty	Model#	Description	Sell Price	Extension
	GM3280			
1	30345	Groundsmaster 3280-D 4WD (Kubota® liquid-cooled, diesel, 3-cylinder, 24.8 hp)	18,303.20	18,303.20
1	31335	72" Guardian Recycler deck with 4 castor wheels	5,215.20	5,215.20
1	30313	Air Ride Seat Suspension	575.20	575.20
1	30398	Milsco Seat	375.20	375.20
1	30707	Armrests	151.20	151.20
1	108-9687	Armrest Adaptor Kit	43.67	43.67
2	93-5974	8" Foam Filled Caster Wheel	139.39	278.77
		Sub-Total:		24,942.44

(No Trades Quoted)

Terms: Net 15 Days (Upon Credit Approval)

Merchandise Total	24,942.44
Trade-In Credit	0.00
Destination Charge	374.14
0.00% * Sales Tax	0.00
	25,316.58

This Quote Is Good for 30 Days

* Sales Tax is subject to change based on the current rules and regulations in effect at the time of delivery

Accepted By: _____

Date: _____

True Lease Financing	Base = \$25,316.58	Rate Factor	Payment	Residual%
Conditional Sale Financing	Base = \$25,316.58	Rate Factor	Payment	

COMMISSION MEETING DATE: June 26, 2018

Date: June 20, 2018

To: Honorable Mayor and City Commissioners

From: Director of Public Safety Jeffrey Lewis

RE: Minor In Possession Ordinance Amendment

SUMMARY OF REQUEST:

Recently, state law was amended relating to MIP offenses and its punishment. The Court has asked us to amend our ordinance.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To adopt the amended ordinance.

**CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. ____**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 54, Article VII of the Code of Ordinances of the City of Muskegon, Michigan, Section 54-263 is amended to read as follows:

Section 54-263. Purchase or consumption of alcoholic liquors by persons under 21.

- (a) A person under 21 shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A person who violates this subsection is responsible for a municipal civil infraction or guilty of a misdemeanor punishable by the following fines and sanctions:
 - (1) For the first violation, the person is responsible for a municipal civil infraction and shall be fined not more than \$100.00. A court may order a person under this subsection to participate in substance use disorder services as defined in Section 6230 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.6230), and designated by the administrator of the office of substance abuse services, and may order that person to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (e) of this section. A person may be found responsible or admit responsibility only once under this subsection.
 - (2) If a violation of this section, Section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or Section 33b(1) of former 1933 (Ex Sess) PA 8, occurs after 1 prior judgment, the person is guilty of a misdemeanor. A misdemeanor under this subsection is punishable by imprisonment for not more than 30 days, but only if the court finds that the person violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than \$200.00, or both. A court may order a person under this subsection to participate in substance use disorder services

as defined in Section 6230 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.6230), and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (e) of this section.

- (3) If a violation of this section, Section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or Section 33b(1) of former 1933 (Ex Sess) PA 8, occurs after 2 or more prior judgments, the person is guilty of a misdemeanor. A misdemeanor under this subsection is punishable by imprisonment for not more than 60 days, but only if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than \$500.00, or both, as applicable. A court may order a person under this subsection to participate in substance use disorder services as defined in Section 6230 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.6230), and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (e) of this section.
- (b) An individual who furnishes fraudulent identification to a person under 21, or notwithstanding subsection (a) of this section, a person under 21 who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.
- (c) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (a) of this section pleads guilty to a violation of subsection (a) of this section or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (a) of this section, the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (a)(3) of this section, payment of the costs including minimum state cost as provided for in Section 18m of Chapter XIIA of the Probate Code of 1939, Public Act No. 288 of 1939 (MCL 712A.18m), and Section 1j of Chapter IX of the Code of Criminal Procedure, Public Act No. 175 of 1927 (MCL 771.3). If a court finds that an individual violated a term or condition of probation

or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this subsection shall be without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. An individual may obtain only one discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

- (1) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.
- (2) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - a. At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.
 - b. The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his conditions of employment or whether an applicant meets criteria for employment.
- (d) A misdemeanor violation of subsection (a) of this section, successfully deferred, discharged, and dismissed under subsection (c) of this section is considered a prior judgment for the purposes of subsections (a)(2) and (a)(3).

- (e) A court may order an individual found responsible for or convicted of violating subsection (a) of this section to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in Section 100a of the Mental Health Code, Public Act No. 258 of 1978 (MCL 333.1100a), in order to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (a) of this section to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a person under 18 years of age not emancipated under Public Act No. 293 of 1968 (MCL 722.1 to 722.6), may request a random or regular preliminary chemical breath analysis as part of the probation.
- (f) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of subsection (a) or of violating subsection (b) as provided in Section 319 of the Michigan Vehicle Code, Public Act No. 300 of 1949 (MCL 257.319).
- (g) A peace officer who has reasonable cause to believe a person under 21 has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. If a person does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- (h) A law enforcement agency, upon determining that an individual less than 18 years of age who is not emancipated under Public Act No. 293 of 1968 (MCL 722.1 to 722.6), allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (a) of this section shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual who allegedly violated subsection (a) of this section is less than 18 years of age and not emancipated under Public Act No. 293 of 1968

(MCL 722.1 to 722.6). The law enforcement agency may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice, including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (a) of this section, his parents or her parents or legal guardian shall be notified immediately as provided in this subsection.

- (i) This section does not prohibit a person under 21 from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by state law, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his personal consumption.
- (j) The following individuals are not considered to be in violation of subsection (a) of this section:
 - (1) A person under 21 who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation, including, but not limited to, medical examination and treatment for any condition arising from a violation of Section 520b to 520g of the Michigan Penal Code, Public Act No. 328 of 1931 (MCL 750.520b to 750.520g), committed against a person under 21.
 - (2) A person under 21 who accompanies an individual who meets both of the following criteria:
 - a. Has consumed alcoholic liquor.
 - b. Voluntarily presents himself or herself to a health facility or agency for treatment or for observation, including, but not limited to, medical examination and treatment for any condition arising from a violation of Sections 520b to 520g of the Michigan Penal Code, Public Act No. 328 of 1931 (MCL 750.520b to 750.520g), committed against a person under 21.
 - (3) A person under 21 who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.
- (k) If a person under the age of 18 who is not emancipated under Public Act No. 293 of 1968 (MCL 722.1 to 722.6), voluntarily presents himself to a health facility or agency for treatment or for observation as provided under subsection (j) of this section, the health facility or

agency shall notify the parent, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

- (l) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of this section.
- (m) The consumption of alcoholic liquor by a person under 21 who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this section if the purpose of the consumption is solely educational and is a requirement of the course.
- (n) The consumption by a person under 21 of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this section.
- (o) Subsection (a) of this section does not apply to a person under 21 who participates in either or both of the following:
 - (1) An undercover operation in which the person purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - (2) An undercover operation in which the person purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the person was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.
- (p) The state police, the commission, or a local police agency shall not recruit or attempt to recruit a person under 21 for participation in an undercover operation at the scene of a violation of subsection (a) of this section.
- (q) In a prosecution for the violation of subsection (a) concerning a person under 21 having any bodily alcohol content, it is an affirmative defense that the person consumed the alcoholic liquor in a venue or location where that consumption is legal.

(r) As used in this section:

Any bodily alcohol content means either of the following:

- (1) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (2) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

Emergency medical services personnel means that term as defined in Section 20904 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.20904).

Health facility or agency means that term as defined in Section 20106 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.20106). (Code 1975, § 12-96; Code 2002, § 54-264; Ord. No. 2288, 1-25-2011).

Prior judgment means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

- (1) This section.
- (2) Section 624a, 624b, or 625 of the Michigan Vehicle Code, Public Act No. 300 of 1949 (MCL 257.624a, 257.624b, and 257.625).
- (3) Section 80176, 81134, or 82127 of the Natural Resources and Environmental Protection Act, Public Act No. 451 of 1994 (MCL 324.80176, 324.81134, and 324.82127).
- (4) Section 167a or 237 of the Michigan Penal Code, Public Act No. 328 of 1939 (MCL 750.167a and 750.237).

2. This Ordinance is to become effective ten (10) days after adoption.

Ayes:

Nays:

First Reading:

Second Reading:

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the ____ day of _____, 2018, at which meeting a quorum was present and remained throughout, and that the 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.

Date: _____, 2018

Ann Marie Meisch, MMC
City Clerk

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2018, the City Commission of the City of Muskegon amended Chapter 54, Article VII, Section 54-263 of the Muskegon City Code, summarized as follows:

1. Section 54-263(a)(1) is amended to include a municipal civil infraction for the first violation of subsection (a) of this section and to allow a court to order a person under 21 to participate in substance use disorder services as defined in Section 6230 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.6230).

2. Section 54-263(a)(2) is amended to include a misdemeanor upon a violation of subsection (a) of this section after one prior judgment and to allow a court to order a person under 21 to participate in substance use disorder services as defined in Section 6230 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.6230).

3. Section 54-263(a)(3) is amended to include a misdemeanor upon a violation of subsection (a) of this section after two prior judgments and to allow a court to order a person under 21 to participate in substance use disorder services as defined in Section 6230 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.6230).

4. Section 54-263(c) is amended to change the sanctions set forth in subsection (a)(1) to the sanctions set forth in subsection (a)(3).

5. Section 54-263(d) is amended to include a misdemeanor violation.

6. Section 54-263(e) is amended to include a department-designated community mental health entity as defined in section 100a of the Mental Health Code, Public Act No. 258 of 1976 (MCL 333.1100a).

7. Section 54-263(f) is amended to include a suspension for a conviction of a second or subsequent violation of subsection (a) or of violating subsection (b).

8. Section 54-263(g) is amended to remove the civil fine of \$100.00 and include a peace officer requesting a preliminary chemical breath analysis, allowing the person under 21 to not consent to such analysis. Upon receiving no consent, the analysis shall not be administered without a court order, but a peace officer may seek to obtain such order.

9. Section 54-263(q) is amended to remove "criminal."

10. Section 54-263(r) is amended to include the definition of *prior judgment*.

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.

Published: _____, 2018

CITY OF MUSKEGON

By _____
Ann Marie Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Commission Meeting Date: June 26, 2018

Date: June 20, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Sale of Property for Industrial Development

SUMMARY OF REQUEST:

Authorize staff to enter into a Real Estate Purchase Agreement with 2420 Remembrance Drive, L.C., a Michigan limited liability company. The company desires to purchase 2420 Remembrance Drive (PPN: 61-24-134-300-0001-00) for \$15,000 per acre, to build a 490,000 square-foot facility.

Additionally, staff request authorization to sell up to 15 acres of land at \$9,000 per acre, pending final land surveying. Parcels include:

- 2359 E. Keating Avenue (Parcel #61-24-134-300-0005-10)
- 2355 E. Keating Avenue (Parcel #61-24-134-300-0005-00)
- 2285 Black Creek Road (Parcel #61-24-134-400-0002-00)

FINANCIAL IMPACT:

- 2420 Remembrance Drive will be sold for \$340,500.00 (\$15,000 per acre).
- Additional parcels will be sold at \$9,000 per acre, pending final land surveying.

BUDGET ACTION REQUIRED:

Sale proceeds to go into the Public Improvement Fund.

STAFF RECOMMENDATION:

Authorize staff to enter into a Real Estate Purchase Agreement with 2420 Remembrance Drive, L.L.C.

REAL ESTATE PURCHASE AGREEMENT

This Real Estate Purchase Agreement ("**Agreement**") is made on the Effective Date (as defined below) by and between **City of Muskegon**, a Michigan municipal corporation ("**Seller**"), and **2420 Remembrance Drive, L.C.**, a Michigan limited liability company, ("**Purchaser**").

Recitals

A. Seller owns the certain parcels of land legally described on attached **Exhibit A**, (the "**Premises**", which is more particularly described on **Exhibit A**).

B. Seller desires to sell the Premises to Purchaser and Purchaser desires to purchase the Premises from Seller, subject to and in accordance with the terms and conditions of this Agreement.

Agreement

Now, therefore, in consideration of the mutual undertakings hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Sale.

1.1 **Purchase and Sale.** Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, the Premises strictly in accordance with and subject to the terms, conditions, and provisions hereinafter set forth.

1.2 **The Premises.** The Premises shall include:

(a) All tenements, hereditaments, privileges, and appurtenances in any way belonging or appertaining to the Premises;

(b) All easements, reciprocal easement agreements and operating agreements, and all rights, whether or not of record, appurtenant to the Premises and the use of all strips and rights-of-way (including public and private vehicular and pedestrian rights-of-way), if any, abutting, adjacent, contiguous to or adjoining the Premises;

(c) All plans and specifications, if any, and all unexpired warranties, guarantees, and sureties, if any, owned, held or received by Seller in connection with the Premises, all to the extent transferable by Seller; and

(d) All licenses, permits, certificates of occupancy, and franchises issued by any federal, state, county or municipal authority relating to the use, maintenance or operation of the Premises, all to the extent transferable by Seller.

Purchaser acknowledges that the term "Premises" shall *not* include any personal property, fixtures or equipment or any permits, licenses, approvals or development rights pertaining to any other real property owned and to be retained by Seller adjacent to or contiguous with the Premises.

2. **Purchase Price.** The purchase price (the “**Purchase Price**”) for the Premises shall be determined as follows:

2.1 The purchase price for 2420 Remembrance Drive shall be \$340,500.00.

2.2 The purchase price for a to-be-agreed-upon portion of the remaining parcels set forth on Exhibit A shall be \$9,000 per useable acre (“usable acres” being those acres not deemed wetlands by the Michigan Department of Environmental Quality that the Michigan Department of Environmental Quality does not allow to be mitigated for trailer parking). The parties will review the remaining parcels and mutually agree on how many usable acres are required for Purchaser’s intended use for either 360 trailer parking spaces or 510 trailer parking spaces, which the parties estimate to be approximately 10.4 to 13.4 acres among the remaining parcels as follows: (a) north portion of 2359 E. Keating Avenue (Parcel #61-24-134-300-0005-10) – approximately 0.2 acres; (b) 2355 E. Keating Avenue (Parcel #61-24-134-300-0005-00) – approximately 5.8 acres without mitigating wetlands or 8.8 acres with mitigating wetlands included; and (c) 2285 Black Creek Road (Parcel #61-24-134-400-0002-00) – approximately 4.4 acres.

3. **Payment Terms.**

3.1 **Earnest Money.** Purchaser shall deliver \$10,000.00 (the “**Earnest Money**”) to First American Title Insurance Company (“**Title Company**”), 4362 Cascade Road, S.E., Suite 109, Grand Rapids, Michigan 49546, Attn: Craig Wandrie, within three business days after the Effective Date of this Agreement. The Earnest Money shall be held for the mutual benefit of the parties, subject to the terms of this Agreement. The parties shall promptly execute any escrow agreement the Title Company may reasonably require, provided that such agreement does not contain terms or conditions that are contrary to the terms of this Agreement.

3.2 **Purchase Price.** Provided that all conditions precedent to Purchaser’s obligations set forth herein are satisfied or waived (or deemed to have been waived), the Purchase Price, including the Earnest Money, plus or minus prorations and adjustments provided for in this Agreement (the “**Balance of Purchase Price**”), shall be paid to Seller at Closing (as hereinafter defined) by wire transfer of immediately available U.S. funds to an account designated by Seller.

3.3 **Disposition of Earnest Money.** Seller and Purchaser instruct the Title Company to place the Earnest Money in a non-interest-bearing account on behalf of Purchaser within two business days after its receipt thereof. The Earnest Money shall be applied as follows:

(a) if Purchaser terminates this Agreement, as expressly authorized pursuant to the terms hereof, the Earnest Money shall be paid to Purchaser as provided herein;

(b) if the Earnest Money is forfeited by Purchaser pursuant to the terms of this Agreement, the Earnest Money shall be paid to Seller as provided herein; and

(c) if Closing occurs pursuant to the terms of this Agreement, the Earnest Money shall be credited against the Purchase Price and paid to Seller at Closing.

4. **Title and Deed.** Seller shall deliver to Purchaser at Closing a covenant deed in form reasonably acceptable to Seller and Purchaser conveying title to the Premises to Purchaser in fee simple, free and clear of all liens, encumbrances and rights of others, except (a) easements, restrictions and

other matters disclosed by the Commitment or the Survey which are approved or deemed approved by Purchaser pursuant to Section 5.3, (b) real property taxes accruing after the creation of separate, independent tax parcels for the Premises (prior to which Seller shall pay all real estate taxes), (c) water and sewer charges that are not yet due and payable, (d) all matters that would be shown by a current and accurate survey or an inspection of the Premises, (e) title exceptions created or suffered by Purchaser, (f) all building, zoning, environmental, and other state, county or federal laws, codes, and regulations (whether existing or proposed) affecting the Premises, including all proffers, special exceptions, conditions, site plan approvals, and other similar matters, if any, related to the zoning of the Premises, and (g) public roads, streets and highways (collectively, the **"Permitted Exceptions"**).

5. **Title Insurance and Survey.**

5.1 **Title Commitment.** Within seven days after the Effective Date, Purchaser, at Seller's expense, will order a commitment for an ALTA Owner's Title Insurance Policy (the **"Commitment"**) issued by the Title Company covering the Premises, together with a true, correct and complete copies of all documents described or referenced in the Commitment. Purchaser will deliver a copy of the Commitment to Seller within two business days after Purchaser's receipt. The Commitment shall: (a) be in an amount equal to the Purchase Price; and (b) name Purchaser as the proposed insured.

5.2 **Survey.** Not later than 5 days prior to the Contingency Termination Date, the Purchaser shall obtain, at Purchaser's sole expense, a new ALTA/NSPS survey of the Premises (**"Survey"**). The Survey shall be performed by a licensed surveyor and certified to Purchaser, Seller, any lender of Purchaser, and the Title Company, and shall contain the legal description of the Premises. The parties acknowledge and agree that the legal descriptions for the Premises attached as Exhibit A are from the Muskegon County tax rolls shall be that as set forth in the commitment for title insurance to be obtained by Seller, and furnished to Buyer under this Agreement, or the survey obtained by Seller. In the event of a conflict between the legal description in the commitment for title insurance and any survey obtained by Buyer, the legal description contained in the survey shall control.

5.3 **Title Review; Curing Unpermitted Matters.**

(a) Not later than 5 days prior to the Contingency Termination Date (as defined below) (such date being the **"Title Review Date"**), Purchaser shall notify Seller (the **"Objection Notice"**) which of the liens, encumbrances and other matters described in the Commitment and/or the Survey, if any, that the Purchaser, in its sole discretion, finds unacceptable (the **"Unpermitted Matters"**). All exceptions reflected in the Commitment or matters reflected on the Survey not so objected to by Purchaser on or before the Title Review Date shall be deemed accepted and approved by Purchaser and shall be deemed Permitted Exceptions. Notwithstanding the foregoing, Purchaser shall not be required to object to any mortgage entered into by Seller or other monetary lien of an ascertainable amount arising from the actions of Seller, and Seller shall cause the same to be removed at or before the Closing. If Purchaser so notifies Seller of any Unpermitted Matter on or before the Title Review Date, then Seller may, in its sole and absolute discretion, and within five business days after receipt of the Objection Notice (**"Seller's Title Response Period"**), elect in writing to (i) cure (by insuring over, removal, endorsement, "bonding off" or otherwise) one or more of the Unpermitted Matters or (ii) not to cure one or more of the Unpermitted Matters. If Seller fails to respond prior to the expiration of Seller's Title Response Period, Seller shall be deemed to have elected not to cure the Unpermitted Matters. In the event Seller does not, within Seller's Title Response Period, commit to cure all of the Unpermitted Matters, or provides written notice that Seller does not intend to (or is deemed to have

elected not to) cure one or more of the Unpermitted Matters, Purchaser shall have the options of (x) proceeding with this Agreement and accepting title to the Premises subject to those Unpermitted Matters which are not to be cured, without adjustment to the Purchase Price, or (y) terminating this Agreement, in which event the Earnest Money shall be returned to Purchaser. Purchaser shall exercise one of its options set forth in clause (x) or (y) above by providing written notice thereof to Seller within five (5) business days after the earlier of: (a) the receipt of written notice from Seller that Seller does not intend to cure any or all of the Unpermitted Matters or (b) the expiration of Seller's Title Response Period, and if Purchaser fails to provide such notice within such time, then Purchaser shall be deemed to have elected to proceed in accordance with clause (x). With respect to material encumbrances that arise after the date of the Commitment, Purchaser shall have the right to object thereto, within five days after becoming aware of the same and the provisions of Section 5.3 shall thereafter apply thereto.

(b) If Seller elects to cure one or more Unpermitted Matters (by insuring over, removal, endorsement, "bonding off" or otherwise in a form reasonably acceptable to Purchaser), Seller shall have a reasonable time period to so cure any such Unpermitted Matters. If Seller is unable to cure any such Unpermitted Matters that Seller has committed to cure prior to Closing pursuant to Section 5.3(a), and provided that Purchaser shall not thereafter waive in writing any such Unpermitted Matters, then Purchaser, as its sole and exclusive remedy with respect to such Unpermitted Matters and Seller's failure thereof to cure same, shall have the right, at its sole option, to terminate this Agreement by giving written notice of such election to Seller, in which event the Earnest Money shall be returned to Purchaser.

5.4 **Title Policy.** At the Closing, and as a further condition of Purchaser's performance of its obligations hereunder, Seller, at Seller's cost, shall cause the Title Company to deliver to Purchaser an standard ALTA owner's title insurance policy (the "**Owner's Title Policy**") issued in accordance with the provisions of the Commitment as specified above, insuring Purchaser as the owner of the Premises for the amount of the Purchase Price, dated as of the time of recording of the covenant deed to the Premises from Seller to Purchaser and subject only to the Permitted Exceptions. Purchaser may request that the Title Company provide such endorsements to the Owner's Title Policy which may be purchased by Purchaser as Purchaser may reasonably require, provided that (i) such endorsements shall be at no cost to, and shall impose no additional liability on, Seller, (ii) Purchaser's obligations under this Agreement shall not be conditioned upon Purchaser's ability to obtain such endorsements and, if Purchaser is unable to obtain such endorsements, Purchaser shall nevertheless be obligated to proceed to close the transaction contemplated by this Agreement without reduction of or set off against the Purchase Price, (iii) the Closing shall not be delayed as a result of Purchaser's request, and (iv) Purchaser, at its sole expense, shall provide any third party items required by the Title Company such as an ALTA/NSPS Land Title Survey, a zoning compliance letter from the City of Muskegon, etc.

6. **Contingencies.**

6.1 ***Due Diligence Investigation.***

(a) Commencing on the Effective Date, Purchaser, and its representatives shall have the right, during normal business hours and after at least 24 hours prior notice, to enter upon the Premises at any time prior to the Contingency Termination Date, to conduct all tests, inspections, feasibility and other studies and all other investigations concerning the Premises that Purchaser requires (including, without limitation, inspection of the physical condition of the Premises, investigation of zoning and other legal requirements) to determine whether the Premises is satisfactory to Purchaser.

Without limiting the foregoing, Purchaser may, at Purchaser's expense and using an environmental consultant of its choice, conduct environmental assessments, investigations and inspections of the Premises, including any improvements and structures located thereon ("**Environmental Assessments**"). The Environmental Assessments shall consist of a scope of work acceptable to Purchaser and may include, without limitation, sampling of soils, water, groundwater and building materials, and the preparation of environmental reports and documents; provided, however, that any invasive testing (other than geotechnical/soil borings which Purchaser may undertake at Purchaser's discretion) shall be subject to Seller's prior written consent, which may be withheld in Seller's sole discretion. Seller shall cooperate, at no cost or liability to Seller, with Purchaser's Environmental Assessments by completing an owner's questionnaire and owner interview in connection with performance of a phase I environmental site assessment pursuant to ASTM Standard E1527-05 and 40 C.F.R. Part 312, *et seq.*

(b) Purchaser's right to enter the Premises and to conduct diligence activities shall be subject to the following conditions: (i) at Seller's election, a representative of Seller shall be present during any entry by Purchaser or its representatives upon the Premises; (ii) Purchaser shall use best efforts to minimize damage to the Premises, and shall not interfere with Seller's operation of the Premises, in conducting such studies and inspections; (iii) Purchaser shall not make any physical changes to the Premises nor take any action on the Premises which would be capable of causing a mechanic's lien to attach without the prior written consent of Seller; (iv) prior to Purchaser entering the Premises to conduct the inspections and tests described above, Purchaser shall, and shall cause each of its contractors and agents to, obtain and maintain (and shall deliver to Seller evidence thereof if requested by Seller), at no cost or expense to Seller, general liability insurance, from an insurer reasonably acceptable to Seller, in the amount of \$2,000,000 combined single limit for personal injury and property damage per occurrence, such policies to name Seller as an additional insured party, which insurance shall provide coverage against any claim for personal liability or property damage caused by Purchaser or its agents, representatives or consultants in connection with any such inspections and tests; and (v) Purchaser shall promptly deliver to Seller copies of all third-party reports, studies and results of tests and investigations obtained or conducted by Purchaser with respect to the Premises.

(c) Purchaser shall (i) keep the Premises free from all liens, and shall indemnify, defend, and hold harmless Seller, from and against all claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorney's fees and costs) incurred, suffered by, or claimed against Seller as a result of tests or studies conducted by or on behalf of Purchaser, or as a result of any damages to the Premises or any adjacent property or injury to persons caused by Purchaser and/or its agents, representatives or consultants in exercising its rights under Section 6 or otherwise; (ii) promptly restore, repair and/or replace any damage to the Premises or any adjacent property caused by or related to the performance of Purchaser's due diligence activities, in order to return the Premises and any adjacent property to its condition prior to such review and examination; and (iii) if the Closing does not occur hereunder for any reason, promptly deliver to Seller any and all materials relating to the Premises provided by Seller to Purchaser. Any such restoration, repair or replacement activity shall be promptly and diligently performed by Purchaser, subject to the reasonable directives and discretion of Seller. The provisions of this subsection (c) shall survive Closing or other termination of this Agreement.

(d) If not previously delivered by Seller to Purchaser, within 10 days after the Effective Date, Seller shall deliver or make available to Purchaser, copies of the following, to the extent in Seller's possession or control:

- (i) Any existing survey of the Premises;
- (ii) Copies of all environmental reports prepared by third parties, all engineering reports, soil reports, and other professional reports or surveys of the Premises.
- (iii) All leases and any other agreements with tenants or occupants or users of the Premises;
- (iv) All written contracts, agreements, warranties, reports and correspondence relating to the ownership, leasing, servicing, operation, management, maintenance, construction or condition of the Premises and/or affecting the Premises;
- (v) All plans and specifications, building permits, certificates of occupancy and other governmental licenses, permits, notices and approvals relating to the Premises;
- (vi) Copies of all asbestos, radon, mold, soil and other environmental assessments and reports including documentation of any environmental remediation work performed on the Premises, and all roof, termite, structural and other physical inspection reports, assessments, audits or evaluations of the Premises in Seller's possession; and
- (vii) All zoning and related agreements and certifications from all applicable governmental agencies with respect to the Premises in Seller's possession.

Seller makes no representation or warranty whatsoever, express or implied, as to the content, completeness or accuracy of any of the documents and items described in this subsection (d).

6.2 **City Commission Approval.** This Agreement is approved by the Muskegon City Commission.

6.3 **Contingency Termination Date.** If Purchaser, in its sole and absolute discretion, is dissatisfied with the Premises based on the tests, inspections, studies, investigations and review of documents described in Section 6.1 or for any other reason whatsoever, then Purchaser may terminate this Agreement by giving written notice to Seller of such termination no later than 5:00 p.m. central time on the date which is 60 days after the Effective Date of this Agreement (the "**Contingency Termination Date**"). If Seller fails to obtain approval as described in Section 6.2 prior to the Contingency Termination Date, this Agreement shall automatically terminate. If Purchaser timely exercises its right under this Section 6.3 to terminate on or before the Contingency Termination Date or this Agreement is automatically terminated because Seller fails to obtain approval as described in Section 6.2, then the Earnest Money shall be returned to Purchaser. If Purchaser fails to timely exercise its right under this Section 6.3 and Seller has obtained the approval as described in Section 6.2,, then the contingencies described in Section 6.1 shall be deemed waived and the Earnest Money shall become non-refundable to Purchaser, unless this Agreement is terminated by Purchaser pursuant to Sections 5.3, 15.1, 16.1 or 17.1.

7. **Closing.**

7.1 **Closing Date.** Subject to any adjournments expressly allowed elsewhere in this Agreement, the closing of the sale of the Premises to Purchaser (the "**Closing**") will be consummated on the date which is 15 days after the later of (a) the Contingency Termination Date and (b) the satisfaction

of the Purchaser's Contingencies set forth in Section 15.1, or such earlier date as mutually agreed by the parties. The Closing shall be performed by delivery of the documents and the payment of the sums to be delivered and paid at the Closing to the Escrow Agent pursuant to reasonably acceptable escrow instructions (the actual date of Closing is referred to as the "**Closing Date**").

7.2 Closing Documents.

(a) Seller shall deliver to Purchaser at Closing the following, all in form and substance reasonably acceptable to Purchaser and/or the Title Company, as applicable:

(i) A covenant deed conveying to Purchaser fee simple title to the Premises, subject to the Permitted Exceptions;

(ii) A general assignment of all property, rights and interests constituting the Premises that are not covered by the deed described above;

(iii) Evidence that the Title Company may reasonably request relating to the removal of exceptions to title that are not Permitted Exceptions;

(iv) Title affidavits, gap undertaking and such other affidavits and other documents reasonably required by the Title Company in connection with the issuance of the Owner's Title Policy, all in form and substance reasonably acceptable to Seller;

(v) A FIRPTA Statement from Seller certifying that Seller is not a "foreign person," "foreign estate," "foreign corporation" or "foreign partnership" or any other foreign entity as such terms are defined in Section 1445 of the Internal Revenue Code and the income tax regulations promulgated thereunder;

(vi) All keys, combinations and other similar items required to properly deliver possession and control of the Premises to Purchaser;

(vii) Evidence of Seller's organizational authority to consummate the transaction contemplated by this Agreement

(viii) Such other documents as reasonably may be required by Purchaser or the Title Company to consummate the transactions contemplated by this Agreement.

(b) Purchaser shall deliver to Seller at Closing the following, all in form and substance reasonably acceptable to Purchaser and/or the Title Company, as applicable:

(i) the Balance of Purchase Price;

(ii) Such documents reasonably required of Purchaser by the Title Company to issue the Owner's Title Policy and close the purchase by Purchaser of the Premises, including without limitation, evidence of Purchaser's organizational authority to consummate the transaction contemplated by this Agreement; and

(iii) Such other documents as reasonably may be required by Seller or the Title Company to consummate the transactions contemplated by this Agreement.

(c) Seller and Purchaser shall jointly deliver (i) a closing statement, (ii) all required real estate transfer tax declarations, returns or affidavits, and (iii) a written direction to the Title Company to apply the Earnest Money toward the Purchase Price and release the Earnest Money to Seller.

8. Prorations.

8.1 Real Estate Taxes and Assessments. Until such time as separate and independent tax parcels have been established by the Premises, Seller shall pay all real estate taxes and all other ad valorem taxes with respect to the Premises; provided, however, if at Closing separate and independent tax parcels have been created by the Premises, then the Real estate taxes and all other ad valorem taxes, if any, with respect to the Premises for the applicable fiscal or calendar year in which the Closing occurs shall be prorated on a per diem calendar-year basis using the actual number of days in such year as a basis. If any bill for taxes proratable hereunder is not yet issued, the real estate taxes shall be calculated using the taxable value as of the Closing Date multiplied by the applicable millage. Seller shall pay in full all special assessment or deferred assessments associated with the Premises.

8.2 Miscellaneous. All items which are customarily prorated in transactions similar to the transaction contemplated hereunder and which are not otherwise addressed in this Agreement will be prorated as of the Closing Date.

9. Possession. Possession of the Premises shall be given by Seller to Purchaser at the time of Closing, subject to the Permitted Exceptions.

10. Closing Costs. Purchaser shall pay the following expenses incurred in connection with the transactions described herein: (a) one-half of all closing fees charged by the Title Company, (b) the fee for the recording of the covenant deed, (c) all premiums and charges for any endorsements to the Owner's Title Policy requested by Purchaser, (d) all premiums and charges for any lender's title insurance policy, (d) the cost of the Survey obtained by Purchaser (if any), (e) any costs incurred by Purchaser in preparing and performing its due diligence investigations, and (f) Purchaser's legal fees and expenses. Seller shall pay, (i) the costs of the Commitment and the base premium for the Owner's Title Policy, and, if Seller elects to remove Unpermitted Matters from title, the cost of removing such Unpermitted Matters from title, (ii) one-half of all closing fees charged by the Title Company, (iii) Seller's legal fees and expenses, and (iv) all state and county transfer taxes and documentary stamp taxes (except with respect to any transfer taxes incurred due to the assignment of the Agreement by Purchaser in accordance with the term hereof, which shall be borne solely by Purchaser). Any other costs not specifically provided for herein shall be paid by the party who incurred those costs, or if neither party is charged with incurring any such costs, then by the party customarily assessed for such costs in the State of Michigan.

11. Brokers. Seller and Purchaser represent and warrant to each other that neither has retained any broker, agent, or finder in connection with the transactions contemplated by this Agreement. The parties both agree to indemnify and hold the other harmless against any claim resulting from a breach of their representations in this Section. This Section shall survive Closing or any termination of this Agreement.

12. Seller's Representations and Warranties.

12.1 Seller represents and warrants to Purchaser that:

(a) Seller, upon approval from the City Commission of the City of Muskegon, shall have the full power and authority to enter into this Agreement, bind Seller and the Premises to the commitments made in this Agreement, and convey or cause the conveyance of the Premises to Purchaser.

(b) The execution, delivery and performance by Seller of this Agreement shall not constitute or cause a default or breach of any agreement or undertaking of Seller or by which the Premises is bound.

(c) To Seller's knowledge, Seller has received no written notice of any claim, demand, damage, action, or cause of action of any person, entity or governmental agency or instrumentality affecting the Premises.

(d) Seller has not granted any person or entity, except Purchaser, any options, rights of first refusal or other purchase rights with respect to the Premises.

(e) To Seller's knowledge, Seller has received no written notice concerning any existing or proposed special assessments or similar taxes, charges or assessments against the Premises or any utility service moratoriums or other moratoriums affecting the Premises.

(f) Except as may be disclosed in any environmental reports delivered by Seller, to Seller's knowledge, (i) Seller has not received any written notice alleging the existing of any toxic or hazardous waste or hazardous substance or other pollutant or contaminant or any other substance on, at or under the Premises which is in violation of any state, federal or local law, regulation or ordinance, and (ii) there are no underground storage tanks located under the Premises.

(g) As of the Effective Date, Seller has received no written notice that any portion of the Premises has been condemned or otherwise taken by any public authority, and Seller has no knowledge that any such condemnation or taking is threatened or contemplated.

(h) To Seller's knowledge, Seller has received no written notice that the Premises is in violation of any law, ordinance, code or regulation which remains uncured.

(i) To Seller's knowledge, there has not been any work performed or materials supplied to the Premises by or on behalf of Seller, nor any contracts entered into by Seller for work performed or materials to be supplied to the Premises prior to the Effective Date which has not been, or at the Closing will not be, paid in full.

12.2 Seller's Knowledge; No Liability. As used in Section 12.1, the term "to Seller's knowledge" or words of similar import (i) shall mean the actual knowledge of City Manager Frank Peterson, and not of any other persons, (ii) shall mean the actual knowledge of such individual, without any investigation or inquiry of any kind, and (iii) shall not mean that such individual is charged with knowledge of the acts, omissions and/or knowledge of Seller's agents or employees. There shall be no personal liability on the part of the designated individual arising out of any representations or warranties made herein. Notwithstanding anything to the contrary contained herein, Seller shall have no liability for breaches of any representations, warranties and certifications (individually, a "**Representation**" and collectively, the "**Representations**") which are made by Seller herein or in any of the documents or instruments delivered by Seller hereunder if Purchaser, its officers, employees, shareholders, members, partners or agents had knowledge of such breach by Seller (including, without

limitation, knowledge gained by Purchaser or any such related party in the course of Purchaser's due diligence activities as to a fact or circumstance which, by its nature, is based on such information, an obvious indication that a Representation was or has become untrue or inaccurate) at Closing and Purchaser elects to proceed to close the transaction contemplated by this Agreement, and Purchaser shall not otherwise have the right to bring any lawsuit or other legal action against Seller, nor pursue any other remedies against Seller, as a result of the breach of such Representation caused thereby. The provisions of this Section 12.2 shall survive Closing or any termination of this Agreement.

12.3 **Changes.** In no event shall Seller be liable to Purchaser for, or be deemed to be in default under this Agreement by reason of, any breach of representation or warranty which results from any change that (i) occurs between the Effective Date and the Closing Date and (ii) is beyond the reasonable control of Seller; provided, however, that the occurrence of a change which is beyond the reasonable control of Seller, if materially adverse to Purchaser, shall constitute the non-fulfillment of the condition set forth in Section 15.1(a).

13. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller that:

13.1 Purchaser has the power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

13.2 The execution of this Agreement by Purchaser is the duly authorized and legally binding action of Purchaser.

13.3 This Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of Purchaser enforceable against Purchaser in accordance with their terms.

13.4 The execution, delivery and performance by Purchaser of this Agreement shall not constitute or cause a default or breach of any agreement or undertaking of Purchaser.

14. **Survival of Representations and Warranties.** Subject to Sections 12.2 and 17.4, the representations and warranties of the parties contained in Sections 12 and 13 shall survive the Closing for a period of nine months after the Closing. Subject to Section 12.2, no claim for a breach of any representation or warranty of a party (a "**Breaching Party**") shall be actionable or payable unless written notice containing a description of the specific nature of such breach shall have been given by the non-breaching party (the "**Non-Breaching Party**") to the Breaching Party prior to the expiration of said six month period. Notwithstanding the foregoing, the Breaching Party shall have 30 days after receipt of said written notice within which to elect to attempt to cure such breach, or if such breach cannot reasonably be cured within 30 days, an additional reasonable time not to exceed 90 days, so long as such cure has been commenced within such 30 days and is being diligently pursued thereafter. If the Breaching Party fails to cure such breach after written notice and within such cure period, the Non-Breaching Party's sole and exclusive remedy shall be an action at law for actual damages as a consequence thereof, which must be commenced, if at all, within 30 days after the expiration of the nine month survival period provided for above; provided that if the cure period afforded to the Breaching Party as provided in this Section 14 continues past the survival period, the Non-Breaching Party shall have the right to file an action at law for actual damages within 30 days following expiration of such cure period. In no event shall Seller's aggregate liability to Purchaser with respect to any breach

of any representation or warranty of Seller in this Agreement exceed the amount of \$100,000. This Section shall survive Closing.

15. Conditions Precedent.

15.1 **Purchaser's Conditions.** This Agreement and all of the obligations of Purchaser under this Agreement are, at Purchaser's option, subject to the fulfillment, before or at the time of the Closing, of each of the following conditions (collectively, "**Purchaser's Contingencies**"):

(a) The representations, covenants, and warranties of Seller contained in this Agreement shall be true in all material respects at the time of the Closing;

(b) The obligations, agreements, documents, and conditions required to be signed and performed by Seller shall have been performed and complied with in all material respects before or at the Closing Date;

(c) The parties have agreed on the number of usable acres included in the Premises;

(d) Seller, Genesee & Wyoming Railroad Service, Consumers Energy and **[ADJACENT PROPERTY OWNER]** shall have granted for the benefit of the Premises, an Ingress, Egress and Underground Fiber Easement, providing for construction of a standard private roadway to provide the access to the Premises from Sun Dolphin Drive along Harris Drive and the location of an underground conduit for fiber within the roadway easement area;

(e) Seller shall have made, for the benefit of the Premises, a binding commitment to construct the standard public roadway extension of Remembrance Drive from Keating Avenue to the north edge of the Premises;

(f) Consumers Energy shall have granted for the benefit of the Premises an ingress and egress easement across a portion of Consumers Energy's property to allow for the extension of Remembrance Drive from Keating Avenue to the north edge of the Premises;

(g) Seller and the Michigan Department of Transportation shall have granted an Ingress and Egress Easement to provide access to Industrial Blvd. to the Premises;

(h) As it relates to the trailer parking contemplated for the project, Michigan Department of Environmental Quality shall have granted Purchaser a permit to allow the trailer parking within the wetland areas located on the Premises; and

(i) Genesee & Wyoming Railroad Services shall have granted for the benefit of the Premises a Ground Lease for the encroachment of the Premises' driveway along the southerly portion of the Premises.

15.2 **Seller's Conditions.** This Agreement and all of the obligations of Seller under this Agreement are, at Seller's option, subject to the fulfillment, before or at the time of the Closing, of each of the following conditions:

(a) The representations, covenants, and warranties of Purchaser contained in this Agreement shall be true in all material respects at the time of the Closing;

(b) The obligations, agreements, documents, and conditions required to be signed and performed by Purchaser shall have been performed and complied with in all material respects before or at the Closing Date; and

(c) The parties have agreed on the number of usable acres included in the Premises.

15.3 **Covenants.** The listing above of any condition precedent that relates to a covenant or agreement of either Seller or Purchaser shall not operate to render such covenant or agreement a condition precedent only, and in the event of a default by Seller or Purchaser under another provision of this Agreement applicable thereto, as the case may be, the non-defaulting party shall continue to have all rights and remedies available to it under Section 17 as applicable. If the conditions set forth in this Section 15 are not satisfied by ninety (90) days following the Effective Date, Purchaser may terminate this Agreement by written notice to Seller, in which event the Earnest Money shall be returned to Purchaser and neither party shall have any further obligations or liabilities hereunder except those stated to survive termination.

16. **Casualty or Condemnation.**

16.1 In the event, prior to the Closing, of a condemnation or other taking of the Premises, or any part of the Premises, or any rights of access or other rights benefiting the Premises as a result of the exercise of the power of eminent domain, or in the event that any type of proceeding for such a condemnation or taking is commenced prior to the Closing by any governmental body, then Seller shall promptly notify Purchaser in writing. If such condemnation applies to a material portion (as hereinafter defined) of the Premises, Purchaser shall have the option to terminate this Agreement by a written notice of its decision within 10 days after Purchaser receives from Seller written notice of the proposed condemnation or taking (and the Closing Date shall be extended, if necessary, to permit Purchaser to make such election within such time period), in which event the Earnest Money shall be returned to Purchaser and neither party shall have any further obligations or liabilities hereunder except those stated to survive termination. If Purchaser does not elect to terminate in accordance with the preceding sentence, or such condemnation applies to less than a material portion of the Premises, the parties shall proceed to closing without reduction of the Purchase Price, and at Closing Seller shall assign to Purchaser all right, title and interest in and to the condemnation proceeds and awards. After the Contingency Termination Date, and provided this Agreement has not been terminated by Seller or Purchaser as provided herein, Seller shall not agree to or accept any compromise or condemnation award without obtaining Purchaser's written approval thereof, not to be unreasonably withheld, conditioned or delayed. For purposes of this Section, a "material portion" of the Premises shall be deemed to mean an area consisting of at least ten percent (10%) or more of the total area of the Premises, or other portion of the property that materially and negatively affects the use of the Premises.

16.2 Inasmuch as the Premises is raw land, no loss, damage or destruction to the Premises shall affect Purchaser's obligations hereunder, and the transaction contemplated herein shall be consummated, and there shall be no reduction in the Purchase Price.

17. **Default/Remedy.**

17.1 ***Seller Default.*** In the event of a default by Seller of which Purchaser is aware prior to Closing in the performance or observance of any of Seller's duties or obligations herein contained, and upon the failure of Seller to cure such default within 10 days following written notice thereof from Purchaser (provided no cure period shall apply for failure to close on the Closing Date), Purchaser, at its option and as its sole and exclusive remedies, may either: (a) terminate this Agreement by written notice to Seller in which event (i) the Earnest Money (even if stated to be non-refundable) shall be returned to Purchaser, and (ii) Seller shall reimburse Purchaser for all third party costs and expenses incurred by Purchaser in negotiating and undertaking the transactions contemplated hereby and investigating the Premises, including, without limitation, all costs associated with the investigations and other activities described or contemplated under Section 6.1 above, not to exceed \$25,000; or (b) to enforce specific performance of Seller's obligation to execute the documents required to convey the Premises to Purchaser and to cure any monetary liens Seller is obligated to cure pursuant to this Agreement at Closing out of the Purchase Price, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligations of Seller hereunder. Purchaser shall be deemed to have elected clause (a) of the preceding sentence if Purchaser fails to file suit for specific performance against Seller in a court having jurisdiction in the county and state in which the Premises is located, on or before the earlier of (x) 60 days following expiration of the 10 days cure period set forth above in this Section, or (y) 60 days following the date upon which Closing was to have occurred. In no event whatsoever shall Purchaser be entitled to any damages, rights or remedies against Seller as a result of any default, breach or failure of Seller hereunder, other than as set forth in this Section.

17.2 ***Purchaser Default.*** In the event of a default by Purchaser of which Seller is aware prior to Closing in the performance or observance of any of Purchaser's duties or obligations herein contained, and upon the failure of Purchaser to cure such default within 10 days following written notice thereof from Seller (provided no cure period shall apply for failure to close on the Closing Date), Seller may terminate this Agreement by written notice to Purchaser and the Earnest Money shall be paid to Seller as liquidated damages and not as a penalty and as Seller's sole and exclusive remedy against Purchaser or, alternatively, Seller may pursue any and all legal and equitable remedies available. Nothing in this Section shall be construed to limit Purchaser's indemnity obligations as set forth in this Agreement or its obligations in Section 6.1(c).

17.3 ***Costs.*** Other than as expressly set forth herein, if any action or dispute arises related to or as a result of this Agreement, the legal fees of the prevailing party in that litigation (including appeals of all levels) shall be paid by the losing party, including all costs and reasonable expenses thereof. If there is a negotiated settlement of such litigation, each party shall be responsible for the costs and fees of its attorneys and professional assistants (whether in court or not). The provisions of this Section shall survive Closing or any termination of this Agreement.

17.4 ***Consequential Damages.*** Neither party shall be liable to the other party for any punitive, speculative or consequential damages.

18. **Miscellaneous.**

18.1 ***Notices.*** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given (a) on the same date as the date on which

such notice is delivered personally, (b) on the date that is three business days after the date on which such notice is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested or (c) on the date that is one business days after the date on which such notice is sent by overnight courier services (such as Federal Express or any other nationally- recognized courier service) for next business day delivery, and, in each case, addressed as follows:

If to Purchaser: 2420 Remembrance Drive, L.C.
c/o Robert Grooters Development Company
4460 44th Street, S.E., Suite C-200
Grand Rapids, Michigan 49512
Attn: Robert Grooters and Rebecca Draaisma

with a copy to: Dykema Gossett PLLC
39577 Woodward Avenue, Ste. 300
Bloomfield Hills, MI 48304
Attn: Kyle R. Hauberg

If to Seller: City of Muskegon
933 Terrace St.
Muskegon, MI 49440
Attn: Frank Peterson

with a copy to: Parmenter Law
PO Box 786
Muskegon, MI 49443
Attn: John C. Schrier

or to such other address as either party may from time to time specify in a written notice to the other in accordance with the terms hereof.

18.2 ***Survival and Merger.*** If the Closing is consummated, then the representations, warranties, covenants and indemnities of each party contained in this Agreement shall not survive the delivery of the deed and the transfer and conveyance of the Premises to Purchaser, but shall be merged therein, except as set forth in Section 14 and for those other provisions which expressly survive Closing, which shall survive such transfer and conveyance of the Premises. If this Agreement expires or is terminated by either party, or if the Closing is not consummated for any reason, then the representations, warranties, covenants and indemnities shall be automatically extinguished, except for those provisions which expressly survive termination, which shall survive such expiration, termination, or failure to consummate.

18.3 ***Assignment.*** Purchaser shall not assign this Agreement without Seller's consent, which consent may be withheld or granted in Seller's sole and absolute discretion, except Purchaser may assign this Agreement, in whole or in part, without Seller's consent, to any Affiliate of Robert Grooters; provided the Affiliate assumes in writing all of the obligations of Purchaser to be performed under this Agreement and a copy of such fully executed assignment and assumption agreement is delivered to Seller at least two business days prior to Closing. For purposes of the prior sentence, the term "**Affiliate**" shall mean and include any person or entity that owns or controls, is owned or controlled by or is under common ownership or control with Purchaser, in whole or in part. Upon such

assignment to an Affiliate, Purchaser shall not be released and discharged from its duties, obligations and liabilities hereunder. Purchaser and its Affiliate shall be responsible for any and all transfer taxes arising as a result of such assignment with Seller having no responsibility for such transfer taxes. The provisions of this Section shall survive Closing or any termination of this Agreement.

18.4 **Successors and Assigns.** Subject to Section 18.3, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

18.5 **Amendments.** This Agreement may be amended or modified only by a written instrument duly authorized and executed by the party or parties intended to be bound thereby.

18.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to the application of choice of law principles.

18.7 **Section Headings; Construction.** The section headings inserted in this Agreement are for convenience only and are not intended and shall not be construed to limit, enlarge or otherwise affect the scope or intent of this Agreement or the meaning of any provision hereof. The terms "hereof," "herein," and "hereunder," and words of similar import, shall be construed to refer to this Agreement as a whole, and not to any particular article or provision, unless expressly so stated. All words or terms used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number or any other gender as the context may require. The words "include" or "including" whenever appearing in this Agreement shall be construed as though they were followed by the words "without limitation" or "but not limited to" or words of similar import or meaning.

18.8 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

18.9 **Merger of Prior Agreements.** This Agreement contain the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, written and oral, between the parties hereto relating to the subject matter hereof, including, without limitation, any so-called letters of intent executed by one or both of the parties.

18.10 **Time of Essence.** Time is of the essence of this Agreement.

18.11 **Severability.** In the event that any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the other provisions hereof so that this Agreement is valid and enforceable to the fullest extent permitted by law.

18.12 **Non-Business Days.** If a party is required to perform an act or give a notice on a date that is a Saturday, Sunday or national holiday, the date such performance or notice is due shall be deemed to be the next business day.

18.13 **No Third Party Beneficiaries.** This Agreement is made for the sole benefit of Seller and Purchaser and their successors and permitted assigns and no other person or entity shall have any right, remedy or legal interest of any kind by reason of this Agreement.

18.14 **"AS IS"**. Purchaser acknowledges that the Agreement will provide Purchaser with a full and fair opportunity to inspect the Premises and Purchaser therefore agrees to purchase the Premises on a fully "AS IS" "WHERE IS" basis, with all faults and defects (whether known or unknown, patent or latent, or otherwise), without recourse against Seller, based entirely upon Purchaser's own independent investigation of the Premises, without representation or warranty of any kind or nature from by or on behalf of Seller, except for the representations of Seller as expressly set forth in Section 12 of this Agreement and subject to Section 14 of this Agreement. Except for the representations of Seller as expressly set forth in Section 12 of this Agreement and subject to Section 14 of this Agreement, Seller hereby disclaims any and all warranties, representations or guarantees, either express or implied, as to its condition, fitness for any particular purpose, merchantability, or any other warranty of any kind, nature, or type whatsoever from or on behalf of Seller warranties. This Section shall survive closing or termination of this Agreement.

18.15 **Post-Closing Covenants.** Neither Purchaser, or its successors or assigns shall, directly or indirectly, use, manage, lease or operate in any manner or capacity, or permit any other person, its successors or assigns, to use, manage, lease or operate in any manner or capacity, all or any portion of the portion of the Premises known as 2420 Remembrance Drive for any of the uses set forth in Exhibit B. In addition, Purchaser and its successors and assigns shall comply with the additional covenants and/or restrictions set forth in Exhibit B. This covenant and Exhibit B shall be incorporated into the deed delivered by Seller to Purchaser pursuant to this Agreement. This Section shall survive Closing.

In Witness Whereof, this Agreement has been executed by the parties hereto, effective as of the date on which parties last sign below (the "**Effective Date**").

Purchaser:

2420 Remembrance Drive, L.C.

Dated: _____, 2018

By: _____

Its: _____

Seller:

City of Muskegon

Dated: _____, 2018

By: _____

Its: _____

EXHIBIT A

Legal Description of Premises

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWN 10 NORTH, RANGE 16 WEST, LYING NORTHERLY OF THE NORTHERLY LINE OF THE RAILROAD RIGHT OF WAY OF THE PENN CENTRAL CORPORATION, EXCEPTING THEREFROM THE NORTH 66 FEET THEREOF AND ALSO EXCEPTING THEREFROM THE EAST 20 FEET THEREOF. TOGETHER WITH AN EASEMENT AND RIGHT OF INGRESS TO AND EGRESS FROM SAID ABOVE DESCRIBED LAND ON, OVER AND ACROSS THE EAST 66 FEET OF THE WEST 321 FEET OF THE SOUTH 66 FEET OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 AND THE EAST 66 FEET OF THE WEST 321 FEET OF THE NORTH 66 FEET OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4, SECTION 34, TOWN 10 NORTH, RANGE 16 WEST.

commonly known as: 2420 Remembrance Dr., Muskegon, Michigan 49442, PPN 24-134-300- 0001-00 consisting of approximately 22.7 acres

SEC 34 T10N R16W PART OF NE 1/4 OF SW 1/4 DESC AS COM AT NW COR OF NE 1/4 OF SW1/4 SD SEC TH S 89D 40M 45S E 200 FT ALG E & W 1/4 LINE TH S 36D 29M 57S W TO A PT ON W 1/8 LINE THAT IS S 1D 17M 25S W 280 FT FROM POB TH N 1D 17M 25S E 280 FT TO POB ALSO INCL COM AT NW COR OF NE 1/4 OF SW 1/4 SD SEC TH S 1D 17M 25S W ALG 1/8 LINE 800.68 FT FOR POB TH S 27D 50M 57S E 367.35 FT TO NLY RR R/W TH N 70D 47M 10S W ALG SD R/W 188 FT TO SD 1/8 LINE TH N 1D 17M 25S E ALG SD 1/8 LINE 263.0 FT TO POB ALSO INCL E 20 FT OF NW 1/4 OF SW 1/4 SD SEC 34

commonly known as: 2359 E. Keating Ave., Muskegon, Michigan 49442, PPN 24-134-300-0005-10 consisting of approximately 1.67 acres

SEC 34 T10N R16W NE 1/4 OF SW 1/4 LYING NELY OF MICHIGAN SHORE RR R/W AND THAT PART OF THE SE 1/4 OF SW 1/4 SEC 34 LYING NELY OF MICHIGAN SHORE RR R/W EXC COM AT NW COR OF NE 1/4 OF SW1/4 SD SEC TH S 89D 40M 45S E 200 FT ALG E & W 1/4 LINE TH S 36D 29M 57S W TO A PT ON W 1/8 LINE THAT IS S 1D 17M 25S W 280 FT FROM POB TH N 1D 17M 25S E 280 FT TO POB ALSO EXC COM AT NW COR OF NE 1/4 OF SW 1/4 SD SEC TH S 1D 17M 25S W ALG 1/8 LINE 800.68 FT FOR POB TH S 27D 50M 57S E 367.35 FT TO NLY RR R/W TH N 70D 47M 10S W ALG SD R/W 188 FT TO SD 1/8 LINE TH N 1D 17M 25S E ALG SD 1/8 LINE 263.0 FT TO POB SUBJ TO ABANDONMENT OF PUBLIC UTILITY AND ROW ESMT L/P 2209/983

commonly known as: 2355 E. Keating Ave., Muskegon, Michigan 49442, PPN 24-134-300-0005-00 consisting of approximately 36.42 acres

ALL THAT PT OF NW 1/4 OF SE 1/4 SEC 34 T10N R16W WHICH LIES NLY OF LITTLE BLACK CREEK EXC THAT PT DESC AS: COM AT E 1/4 COR SD SEC TH N 89 DEG 43 MIN 20 SEC W ALG E & W 1/4 LINE SD SEC 1401.10 FT TO SE COR OF LOT 37 PORT CITY IND CENTER NO 3 TH S 00 DEG 36 MIN 10 SEC W ALG W LINE OF BLACK CREEK RD 69.67 FT TO S LINE OF CONSUMERS POWER CO PROP AS DESC IN A DEED RECORDED IN L 1006 P 153 FOR POB TH N 87 DEG 13 MIN 22 SEC W ALG SD LINE 84.22 FT TO A PT WHICH IS 66 FT S OF SD E & W 1/4 LINE TH N 89 DEG 43 MIN 20 SEC W PAR TO SD E & W 1/4 LINE 80.84 FT TH S 00 DEG 36 MIN 10 SEC W 400 FT TH S 89 DEG 43 MIN 20 SEC E 165 FT TO W LINE OF SD BLACK CREEK RD TH N 00 DEG 36 MIN 10 SEC E ALG SD W LINE 396.33 FT TO POB ALSO EXC THE FOL: RECOM AT SE COR LOT 37 OF PORT CITY IND CENTER NO 3 TH S 00 DEG 36 MIN 10 SEC W ALG W LINE OF BLACK CREEK RD 530 FT FOR POB TH N 89 DEG 43 MIN 20 SEC W 140 FT TH S 00 DEG 36 MIN 10 SEC W 300 FT TH S 89 DEG 43 MIN 20 SEC E 140 FT TO W LINE OF SD BLACK CREEK RD TH N 00 DEG 36 MIN 10 SEC E

ALG SD W LINE 300 FT TO POB

commonly known as: 2285 Black Creek Rd., Muskegon Michigan 49442, PPN 24-134-400-0002-00 consisting of approximately 24.25 acres

THAT PART OF NW 1/4 OF SW 1/4 SEC 34 T10N R16W LYING S OF A LN PAR TO & 132 FT SLY OF PENN RR R/W AND THAT PART OF THE NE 1/4 OF SW 1/4 SEC 34 T10N R16W COM AT SW COR OF NE 1/4 OF SW 1/4 FOR POB, TH N 1 DEG 17 MIN 25 SEC E ALG 1/8 LN 117.17 FT TO SLY LN CONSUMERS POWER CO, TH S 70 DEG 47 MIN 10 SEC E ALG SD LN 358.43 FT TO 1/8 LN, TH N 89 DEG 51 MIN 45 SEC W ALG SD 1/8 LN 341.10 FT TO POB. CONTAINING 10 ACRES M/L. SUBJ TO UTILITY ROW ESMT 2209/984

commonly known as 1770 Sun Dolphin Rd., Muskegon, Michigan 49444, PPN 24-134-300-0003-00 consisting of approximately 10 acres

EXHIBIT B

Use Restrictions

The Premises shall not be used or developed for any of the following listed purposes:

- (i) Any funeral home, crematory, cemetery, or sale of funeral, cremation or cemetery related services or merchandise, including monuments;
- (ii) Any junk, salvage or wrecking yard;
- (iii) Any dumping, disposal, incineration, reduction of garbage or refuse (exclusive of garbage containers properly screened);
- (iv) Any animal slaughtering, or the confinement of animals for feeding, finishing and preparation for slaughtering, including stockyard and feeding pens;
- (v) Any asphalt manufacturing or refining or any similar petroleum or petrochemical refining or manufacturing process;
- (vi) Any asphalt or concrete paving, mixing or batching plant;
- (vii) Any bone distillation or the reduction, rendering or incineration of garbage, animals or animal waste fats, fish or similar materials or products;
- (viii) Any nude dancing establishment or other business primarily engaged in the sale, display or distribution of pornographic or sexually explicit entertainment, services or materials; or
- (ix) Any massage parlor, modeling studio or establishment where women or men are engaged in other salacious activities.

In addition to the foregoing, Purchaser shall, at its sole cost and expense, upon the development or re-development of the Premises, provide for landscaping, including a buffer and screening, along the property line bordering the Cemetery Property (as defined herein), which shall be consistent with the aesthetic nature and quality of the Cemetery Property and as reasonably required to sufficiently screen the Premises from the Cemetery Property. **"Cemetery Property"** means the property north of the Premises owned by Seller and operated as a cemetery and/or related uses. Any development or redevelopment of the of the Premises shall be conducted and completed in a manner that does not interfere with the existing flow of storm water from the Cemetery Property or cause any additional storm water to flow from the Premises onto the Cemetery Property. The Cemetery Property is being operated as a cemetery and/or related uses and Purchaser and its representatives, employees, affiliates, invitees, licensees, consultants and contractors shall conduct themselves during any development or redevelopment of the Premises with an appropriate level of decorum and in a manner that does not unreasonably disrupt, interfere with or disturb the conduct of Seller's business or the use or enjoyment of the Cemetery Property by Seller or its invitees, licensees or permittees. The conditions set forth herein shall be binding on Purchaser's successors and assigns and shall run with the Premises in favor of the owner of the Cemetery Property for so long as the Cemetery Property is operated as a cemetery and/or related uses, and shall be in addition to/supplement any minimum land use or other governmental requirements applicable to the development or redevelopment of the Property; provided, however, that the requirements set forth herein may be waived or modified in whole or in part from time-to-time at Purchaser's request by a writing executed by the owner of the Cemetery Property (such consent to be granted or denied at the owner of the Cemetery Property's sole discretion) and recorded in the land records of the county in which the Premises are located.

Date: 6/26/2018

To: Honorable Mayor and City Commission

From: Department of Public Works

RE: Evergreen Mausoleum Roof Replacement

SUMMARY OF REQUEST: To approve the complete roof replacement of the Evergreen Cemetery mausoleum by Ostrander Roofing in the 2019 fiscal year.

FINANCIAL IMPACT: Total Cost \$ 94,500.00

BUDGET ACTION REQUIRED: None, budgeted item for 2019 fiscal year.

STAFF RECOMMENDATION: To approve the Evergreen mausoleum roof replacement.



THE GARLAND COMPANY, INC.

HIGH PERFORMANCE ROOFING AND FLOORING SYSTEMS

3800 EAST 91 STREET • CLEVELAND, OHIO 44105-2197

PHONE: (216) 641-7500 • FAX: (216) 641-0633

NATIONWIDE: 1-800-321-9336

June 10, 2018

Kevin Santos
Muskegon, City of
Evergreen Cemetery
391 Irwin Ave.
Muskegon, MI 49442

TJ Morris

823 Ashlee Ct.

Norton Shores, MI 49441

Phone: (616) 502-6817

Email: tmorris@garlandind.com

Kevin,

The summary of the roof assessment is listed below. We inspected each section to provide information on existing conditions of the roof system and deck. Once we had this information we were able to provide corresponding budgets (see attached map) for required work based on the future needs of the city. This is a condensed version of the full RAMP reported provided in the summer of 2017.

Evergreen Cemetery

Condition: Failed

Recommendation: Replacement

Details: All four roof sections at the Mausoleum in Evergreen Cemetery are in “failed” condition and are in need of a replacement. The flashings are tearing apart leaving multiple holes in the vertical substrates. The field of the roof is also experiencing pressure failure which is allowing water to infiltrate the building. There has been damage inside of the building due to water damage.



As we discussed earlier this month, once budgets are approved, we can schedule a roof replacement for this summer/fall. Ostrander Roofing won the bid for the roof. They are a quality contractor's that will do great work and stand behind it. This roof is in dire need of a replacement that is designed properly and will last against the harsh weather conditions West Michigan experiences.

Sincerely,

TJ Morris
Roof Management Specialist
The Garland Company, Inc.

BIDS:

CITY OF MUSKEGON
TELEPHONE BID TABULATION
PROJECT: EVERGREEN CEMETERY

DATE: 3-May-18

REQUISITION

		NAME OF BIDDER		NAME OF BIDDER		NAME OF BIDDER	
VENDOR		BOB'S ROOFING		OSTRANDER ROOFING		ALLIED ROOFING	
TELEPHONE		231-510-8311		616-240-0553		616-291-2433	
QUOTED BY		JEREMY NOVAK		RICHARD OSTRANDER		WAYNE ALLEN	
QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
	2018 REPLACEMENT		\$ 110,016.00		\$ 94,500.00		\$ 109,300.00
DIFFERENCE			\$ 110,016.00		\$ 94,500.00		\$ 109,300.00
CASH DISCOUNT TERMS							
F.O.B							
DELIVERY TIME FROM RECEIPT OF PURCHASE ORDER							

Date: 6/26/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Roof Replacement - Water Filtration Plant – Sections #5 and #12

SUMMARY OF REQUEST:

Authorize staff to enter into a roof replacement agreement at Water Filtration Plant – Sections #5 and #12 with Bob's Roofing since they submitted the lowest responsible bid of \$212,885.

FINANCIAL IMPACT:

\$212,885.

BUDGET ACTION REQUIRED:

The project is included in the FY 2018-19 budget.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Bob's Roofing for a cost of \$212,885.

CITY OF MUSKEGON

BID TABULATION

PROJECT: WATER FILTRATION PLANT- ROOF REPLACEMENT, SECTIONS #5 AND #12

DATE: 15-Apr-18

REQUISTION

		NAME OF BIDDER		NAME OF BIDDER		NAME OF BIDDER	
	VENDOR	BOB'S ROOFING		OSTRANDER ROOFING		ALLIED ROOFING	
	TELEPHONE	231-510-8311		616-240-0553		616-291-2433	
	QUOTED BY	JEREMY NOVAK		RICHARD OSTRANDER		WAYNE ALLEN	
QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
	2018 REPLACEMENT	SECTION #5	\$ 212,885.00	SECTION #5	\$ 254,000.00	SECTION #5	\$ 262,300.00
TOTAL			\$ 212,885.00		\$ 254,000.00		\$ 262,300.00
CASH DISCOUNT TERMS							
F.O.B							
DELIVERY TIME FROM RECEIPT OF PURCHASE ORDER							

Date: 6/26/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works - Filtration

RE: Walls and Windows Restoration - Water Filtration Plant – Section #5

SUMMARY OF REQUEST:

Authorize staff to enter into a walls and windows restoration agreement at Water Filtration Plant –Section #5 with Kent Companies since they submitted the lowest responsible bid of \$29,670.

FINANCIAL IMPACT:

\$29,670.

BUDGET ACTION REQUIRED:

The project is included in the FY 2018-19 budget.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Bob's Roofing for a cost of \$29,670.

CITY OF MUSKEGON

BID TABULATION

PROJECT: WATER FILTRATION PLANT- WALLS AND WINDOWS RESTORATION, SECTION #5

DATE: 15-Apr-18

REQUISTION

		NAME OF BIDDER		NAME OF BIDDER		NAME OF BIDDER	
	VENDOR	PREMIER CAULKING		WRIGHT SERVICES		KENT COMPANIES	
	TELEPHONE	616-454-5227		616-272-8324		616-970-0340	
	QUOTED BY	FRED RUSSO		DREW WRIGHT		ZACH RICHMOND	
QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
	2018 WALL RESTORATION	SECTION #5	\$ 38,800.00	SECTION #5	\$ 42,700.00	SECTION #5	\$ 29,670.00
TOTAL			\$ 38,800.00		\$ 42,700.00		\$ 29,670.00
CASH DISCOUNT TERMS							
F.O.B							
DELIVERY TIME FROM RECEIPT OF PURCHASE ORDER							



THE GARLAND COMPANY, INC.

HIGH PERFORMANCE ROOFING AND FLOORING SYSTEMS

3800 EAST 91 STREET • CLEVELAND, OHIO 44105-2197

PHONE: (216) 641-7500 • FAX: (216) 641-0633

NATIONWIDE: 1-800-321-9336

June 10, 2018

Sanjeev Mungarwadi
Muskegon, City of
Water Filtration Plant
1900 Beach St.
Muskegon, MI 49441

TJ Morris

823 Ashlee Ct.

Norton Shores, MI 49441

Phone: (616) 502-6817

Email: tmorris@garlandind.com

Sanjeev,

The summary of the roof assessment is listed below. We inspected each section to provide information on existing conditions of the roof system and deck. Once we had this information we were able to provide corresponding budgets (see attached map) for required work based on the future needs of the city. This is a condensed version of the full RAMP reported provided at the end of 2016.

Section #5

Condition: Failed

Recommendation: Replacement

Details: The existing ballasted EPDM roof has “failed”. The system has taken an extreme amount of water in and is no longer protecting the building. The rubber membrane is also starting to stretch away from the wall which is compromising the perimeter of the system. We have scanned the roof with a nuclear imaging camera to see how wet the insulation is. Unfortunately, the insulation came back more than 75% wet. Due to these conditions, the only way to fix the issues are to replace the roof.

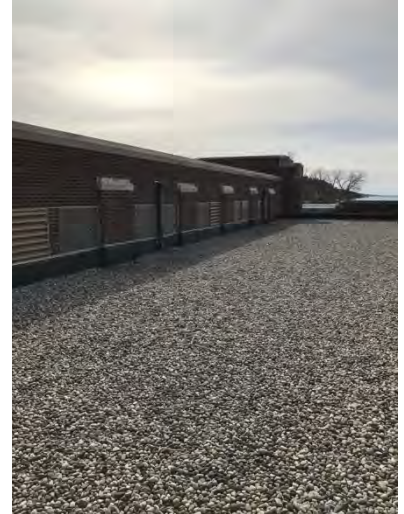


Section #5 Walls and Windows

Condition: Poor

Recommendation: Restoration

Details: Along with Section #5 roof, the walls and windows are in desperate need of some restoration work. The brick is in rough shape and the block windows have chips and cracks in them. The limestone accent details are also in rough shape and are in need of work.



As we discussed earlier this month, once budgets are approved, we can schedule a roof replacement for this summer/fall. Bob's Roofing won the bid for the roof, and Kent Companies won the bid for the wall and window restoration. They are a quality contractor's that will do great work and stand behind it. This roof is in dire need of a replacement that is designed properly, and will last against the harsh weather conditions the water filtration plant experiences.

Sincerely,

TJ Morris
Roof Management Specialist
The Garland Company, Inc.

Commission Meeting Date: June 26, 2018

Date: June 29, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance – Fences

SUMMARY OF REQUEST:

Staff-initiated request to amend Section 2331 of the zoning ordinance to allow six foot tall fences in front yards on corner lots in residential areas, under certain conditions.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously approved the request 5-0, with four members absent.

PLANNING COMMISSION EXCERPT
STAFF REPORT
June 14, 2018

SUMMARY

1. Six-foot tall fences are not allowed in front yards. This poses a problem for corner lots, which are considered to have two front yards. Home owners are forced to reduce their usable back yard space by fencing in only a portion of their back yards.
2. This amendment would allow property owners to utilize more of their yard by extending the allowable fence footprint. Staff would still make sure that there are no vision issues for drivers/pedestrians when they apply for a fence permit.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2311 of the zoning ordinance to allow six foot tall fences in front yards on corner lots in residential areas, under certain conditions.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

Additions in **bold**.

SECTION 2331: LANDSCAPING, FENCING, WALLS, SCREENS AND LIGHTING

14. Height limitations:

- a. Side and rear yards: In residential districts a wall, fence or yard enclosure may be up to six (6) feet in height behind any building line of a structure which abuts a street (see Figure 2.9).
- b. Front yards: In any residential front yard (in front of any building line of a structure which abuts a street), the height of a fence shall not exceed three (3) feet, unless an open fence is provided (e.g., chain link, picket) in which case it may be a maximum height of four (4) feet when such fence does not reduce visibility or interfere with clear vision at intersections, alleys and drives. **Corner lot exemption: Corner lots may have a six-foot tall fence on the secondary front yard (along the street that does not contain the main entrance to the home) as long as clear vision is maintained.**

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 26th day of June, 2018, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2018.

Ann Meisch, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on June 26, 2018, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2311 of the zoning ordinance to allow six-foot tall fences in front yards on corner lots in residential areas, under certain conditions.

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

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

Published _____, 2018.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: June 26, 2018

Date: June 20, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance – Accessory Structures

SUMMARY OF REQUEST:

Staff-initiated request to amend Section 2311 of the zoning ordinance to allow accessory structures in front yards on corner lots, under certain conditions.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously approved the request 5-0, with four members absent.

PLANNING COMMISSION EXCERPT
STAFF REPORT
June 14, 2018

SUMMARY

1. Accessory structures, such as sheds and garages, may not be located in a front yard. The way the zoning ordinance is written makes it difficult for corner lots to build a shed/garage without a variance, since corner lots have two front yards. These variances have traditionally always been approved.
2. Staff is proposing to amend the ordinance to allow these structures on corner lots as long as it is not in the front yard of the main street (the street where the main entrance is located).

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend Section 2311 of the zoning ordinance to allow accessory structures in front yards on corner lots, under certain conditions.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

Additions in **bold**.

SECTION 2311: ACCESSORY STRUCTURES & BUILDINGS

Front Yard, prohibition: Buildings or structures accessory to the principal shall not be permitted in any front yard, **except for corner lots, which may be placed in the front yard on the secondary front street (street that does not contain the main entrance to the home).**

This ordinance adopted:

Ayes: _____

Nayes: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____
Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 26th day of June, 2018, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2018.

Ann Meisch, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on June 26, 2018, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2311 of the zoning ordinance to allow accessory structures in front yards on corner lots, under certain conditions.

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

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

Published _____, 2018.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

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

Account No. 101-80400-5354

Commission Meeting Date: June 26, 2018

Date: June 18, 2018
To: Honorable Mayor and City Commissioners
From: Finance Director
RE: Water Rate Increase

SUMMARY OF REQUEST: To adopt the resolution to increase the rate charged to City water customers for water usage 4% every year for the next five (5) years to cover the cost of infrastructure improvements to the Water Filtration Plant and the Water Distribution system. The water rates have not been increased since 2013.

FINANCIAL IMPACT: The increase for FY2018-19 will generate an estimated \$308,000 annually.

BUDGET ACTION REQUIRED: None at this time. The rate was incorporated into the FY 2018-19 budget that was recently approved by the City Commission.

STAFF RECOMMENDATION: Adoption of the attached resolution.

CITY OF MUSKEGON

Resolution No. _____

A Resolution amending the general fee resolution of the City.

RECITALS

A review of the water rates has been undertaken by staff, City staff recommends and City commission has determined that an increase in the rates for water service is justified in the opinion of the City Commission.

THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION:

1. For service provided after July 1, 2018, the rate for water shall be increased 4% from \$1.69 per hundred cubic feet to \$1.76 per hundred cubic feet.
2. For service provided after July 1, 2019, the rate for water shall be increased 4% from \$1.76 per hundred cubic feet to \$1.83 per hundred cubic feet.
3. For service provided after July 1, 2020, the rate for water shall be increased 4% from \$1.83 per hundred cubic feet to \$1.90 per hundred cubic feet.
4. For service provided after July 1, 2021, the rate for water shall be increased 4% from \$1.90 per hundred cubic feet to \$1.98 per hundred cubic feet.
5. For service provided after July 1, 2022, the rate for water shall be increased 4% from \$1.98 per hundred cubic feet to \$2.06 per hundred cubic feet.

This resolution passed.

Ayes _____

Nays _____

CITY OF MUSKEGON

By _____
Ann Marie Meisch, Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission, held on _____, 2018. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By _____
Ann Marie Meisch, Clerk

Commission Meeting Date: June 26, 2018

Date: June 18, 2018
To: Honorable Mayor and City Commissioners
From: Finance Director
RE: Sanitation Service Fee Resolution

SUMMARY OF REQUEST: To adopt the resolution to continue charging a sanitation service fee of \$1.20 per month per residential utility bill. This charge will cover the difference between what is currently being collected through property taxes and what the City currently pays for residential sanitation.

FINANCIAL IMPACT: This fee will generate an estimated \$198,000.

BUDGET ACTION REQUIRED: None at this time. The rate was incorporated into the FY 2018-19 budget that was recently approved by the City Commission.

STAFF RECOMMENDATION: Adoption of the attached resolution.

CITY OF MUSKEGON
RESOLUTION NO. _____

At a regular meeting of the City Commission of Muskegon, Michigan, held at the City Commission Chambers on June 26, 2018.

RECITALS

After reviewing the cost to provide sanitation services for the residents of the City of Muskegon, the City Commission has determined that the funds generated from the 3 mills dedicated to sanitation currently does not cover the costs to provide the service at its current level.

THEREFORE, THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY RESOLVES:

1. Effective July 1, 2018, a monthly service fee of \$1.20 will continue to be charged to all residential utility billings.
2. This rate increase will be in effect until June 30, 2019 at which time it will be re-evaluated with the proposed budget.

The above changes to be effective as noted above.

This resolution adopted.

YEAS:

NAYS:

CITY OF MUSKEGON

By: _____
Ann Marie Meisch, MMC, City Clerk

STATE OF MICHIGAN COUNTY OF MUSKEGON

I hereby certify that the foregoing is a true and complete copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Muskegon, Michigan, held on the 26th day of June, 2018 and that the minutes of the meeting are on file in the office of the City Clerk and are available to the public. Public notice of the meeting was given pursuant to and in compliance with Act 267, Public Acts of Michigan, 1976.

Commission Meeting Date: June 26, 2018

Date: June 19, 2018
To: Honorable Mayor and City Commissioners
From: Finance Director
RE: Sewer Rate Adjustment

SUMMARY OF REQUEST: In 2017 a resolution with a treatment rate for our customers that is based on a multiplier of 1.68 times the rate the county bills the city for wastewater was adopted. The 2018/19 budget calls for the multiplier to be raised to 1.73 to cover the costs of capital improvement needs of our aging infrastructure over the next ten years.

FINANCIAL IMPACT: None at this time.

BUDGET ACTION REQUIRED: None at this time. The proposed rate change was incorporated into the FY 2018-19 budget that was recently approved by the City Commission.

STAFF RECOMMENDATION: Adoption of the attached fee adjustment resolution.

CITY OF MUSKEGON
RESOLUTION NO. _____

At a regular meeting of the City Commission of Muskegon, Michigan, held at the City Commission Chambers on June 26, 2018.

RECITALS

A review of the rates for sewer service has been accomplished by the city's staff, recommendations received, and the City Commission has determined that the following rate changes are justified. Accordingly, this resolution is made for the purpose of maintaining the financial viability of the city's sewer system.

THEREFORE, THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY RESOLVES:

1. Effective June 26, 2018, to rescind City of Muskegon Resolution No. 2017-53(F), which was adopted June 27, 2017.
2. Charges for residential sewer service shall be changed from a multiplier of 1.68 to 1.73 of the rate the county bills the city for wastewater treatment effective July 1, 2018, with future rates to be adjusted as the county charges are adjusted. The monthly sewer administration charge shall remain unchanged at \$3.00.
3. Charges for commercial/industrial sewer service shall continue to be billed at a rate of 1.25 times (1.25x) the city rate for residential sewer service. The monthly sewer administration charge shall remain unchanged to \$3.00.
4. Charges for all non-metered residential sewer customers will be calculated based on an assumed usage rate of 12 hundred cu. ft. per month.
5. Unless there is a separate agreement specifying a different billing method, non-resident users of the city sewer system will be billed at a rate that is double (2x) the city rate for that class of user.

The above changes to be effective as noted above.

This resolution adopted.

YEAS:

NAYS:

CITY OF MUSKEGON

By: _____
Ann Marie Meisch, MMC, City Clerk

STATE OF MICHIGAN COUNTY OF MUSKEGON

I hereby certify that the foregoing is a true and complete copy of a resolution adopted at a meeting of the Board of Commissioners of the City of Muskegon, Michigan, held on the 26th day of June, 2018 and that the minutes of the meeting are on file in the office of the City Clerk and are available to the public. Public notice of the meeting was given pursuant to and in compliance with Act 267, Public Acts of Michigan, 1976.

Commission Meeting Date: June 26, 2018

Date: June 20, 2018
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
**RE: Approval of a Neighborhood Enterprise Zone Certificate –
337 Terrace Point Circle (unit #7)**

SUMMARY OF REQUEST:

An application for a Neighborhood Enterprise Zone (NEZ) certificate has been received from Robert Heminger for the new construction of a home at 337 Terrace Point Circle. The estimated cost for construction is \$350,000. The applicant has met local and state requirements for the issuance of the NEZ certificate.

FINANCIAL IMPACT:

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

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approval of the NEZ certificate.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

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

WHEREAS, an application for a Neighborhood Enterprise Zone Certificate has been filed with the City Clerk by Robert Heminger to construct a home at 337 Terrace Point Circle in the Terrace Point Condominium neighborhood, and;

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

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

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

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

Adopted this 26th day of June, 2018.

Ayes:

Nays:

Absent:

By: _____
Stephen J. Gawron, Mayor

Attest: _____
Ann Meisch
City Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, Michigan at a regular meeting held on June 26, 2018.

By: _____
Ann Meisch
City Clerk

Date: 6/26/2018

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Engineering services - Pilot Drinking Water Community Water
Supply Grant Agreement

SUMMARY OF REQUEST:

Authorize staff to enter into an Engineering Agreement with Prein & Newhof, as per the attached document, to provide professional services for the recently awarded Pilot Drinking Water Community Water Supply Grant from the DEQ.

Staff recently applied for a Pilot Drinking Water Community Water Supply Grant through the DEQ and was awarded \$600,000 for service line inventory and replacement. Prein & Newhof will charge \$100,000 for service line inventory and \$13,000 for specifications and bidding assistance which will leave \$487,000 for service line replacement through contracted help.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize staff to enter into an agreement with Prein & Newhof.

May 29, 2018

Mr. David Baker
City of Muskegon Department of Public Works
1350 East Keating
Muskegon, MI 49442

RE: Water System GIS and Lead Water Service Replacements
Pilot Grant - City of Muskegon 2018

Dear Dave:

Congratulations on receiving one of the Pilot Program grants from the MDEQ for Lead Service Line Replacements. We are pleased to present a proposal to provide professional services to assist the City of Muskegon with updating its distribution and service line inventory and to assist with service line replacements, as described below. We understand that city staff will provide most of the construction phase services. We are available to help on that phase as well, if needed.

We propose to complete the following:

Distribution System Material Inventory

We will assist by updating and improving the distribution and service line inventory in GIS. The specific tasks proposed include:

- Hyperlink water system record plans (as-builts) to your water system GIS. We will then review these plans and update the information that is already in GIS in order to improve the accuracy of the location, installation date, material, and diameters of the water mains and services. There are approximately 6,400 record plans to link and obtain data from.
- Scan and hyperlink water service “tie cards” and populate data in GIS including location, service size, material, and installation date. Similar to the above, we will review the tie cards to extract data to update your database with the information. It is our understanding that you have approximately 14,000 services.
- Incorporate the City’s water service line replacement spreadsheet data into GIS. The bulk of the work is in renaming any of the addresses in the spreadsheet so that they match up exactly with the parcels in the GIS.

This inventory/scanning process will allow the City of Muskegon to be able to access record plans and tie cards in the field on their tablets. The record plan linking will improve the accuracy of water main age, diameter and material. It will also give you the ability to spatially analyze and track water service replacement progress.

We estimate the cost for these services to be approximately \$100,000, which is what we estimated for your grant application. A spreadsheet showing our estimates of time and cost is attached. The actual cost will depend on how many records there are and the quality of the information on each.

Lead Service Line (LSL) Replacement

Your pilot grant calls for LSL replacement from the water main to the water meter inside the home. We assume the following:

- Work would be performed by a private contractor.
- Work would be performed following the recommendations of the AWWA Standard (ANSI/AWWA 810-17: Replacement and Flushing of Lead Service Lines).

We propose to assist you with the following:

- Review potential materials (copper versus others) for private portion of the service line replacement.
- Assist you with determining how to prioritize LSL replacements.
- Prepare technical specifications for use with City contract and bidding documents.
- Prepare scope of work and proposal quantities for the LSL replacements that will be included in bidding documents and can be used during construction for contractor payments.
- Prepare maps showing the properties for LSL replacement for inclusion in bidding documents.
- Assist during bidding to answer questions and to tabulate bids, evaluate references and make an award recommendation.
- Assist with reviewing and preparing contractor progress payments (review quantities installed and make recommendations for payment). Progress payments are typically processed once per month.

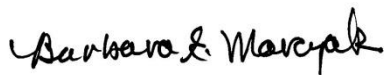
We can also assist you with grant reimbursement requests. We understand these will be very similar to the SAW grant reimbursement requests.

We estimate the cost for these services to be approximately \$13,000. A spreadsheet showing our estimates of time and cost is attached. We can also assist with a communication plan (such as flyers, postcards, etc.) to residents that will have their service replaced. This has not been included in the cost at this time, however.

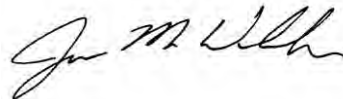
If the scope of work proposed meets your needs, then we can prepare a Professional Services Agreement for your signature. If you have any questions or would like to further discuss the project, please contact us.

Sincerely,

Prein&Newhof



Barbara E. Marczak, P.E.



Jason M. Washler, P.E.

Enclosures: Professional Fee Estimate

City of Muskegon - LSL Replacement and Distribution Inventory Professional Fees and Labor Hours

Labor Hours

Position	Team Leader	Sr. GIS	Sr. Eng.	Engineer	GIS Technician	Clerical	Expenses	Mileage	Total Cost
Staff Member	BM	ED	MH	TD	TBD	MVK			
Distribution System Inventory/GIS Update									
Project administration, progress meetings, tracking and monthly reimbursements	30	8		40	6		\$300	100	\$10,300
Hyperlink water system plans (approx 5400)	4	4		20	280		\$300		\$24,400
Scan tie cards and populate GIS info	4	10		20	750		\$300		\$60,400
Water Service line replacement spreadsheet - put into GIS		4		10	20		\$300		\$3,300
Deliver final GIS to City and review		4		8			\$300		\$1,600
Subtotal	38	30	0	98	1,056	0			\$100,000
Prepare Lead Service Line Replacement Specifications									
Kick-off meeting	4		4	4				20	\$1,500
Prepare draft specifications	4		15	20		4			\$4,700
Review with city and prepare final specifications	2		4	10		4		20	\$2,100
Bidding Assistance (answer questions, review bids, etc.)	4		4			2	\$300		\$1,500
Minor assistance during construction (questions, etc)	5		10	10			\$200	50	\$3,200
Subtotal	19	0	37	44	0	10	\$500	90	\$13,000
Total Estimated Services	57	30	37	142	1,056	10	500	90	\$113,000

Date: 6/26/2018
To: Honorable Mayor and City Commissioners
From: Department of Public Works
RE: Wastewater Collection System Upgrades

SUMMARY OF REQUEST:

Public Works staff are proposing improvements to the wastewater collection system. The purpose of the improvements is to provide a more reliable and resilient wastewater collection system, replace aging and structurally deficient sewer infrastructure, reduce stormwater infiltration and inflow, provide accessibility for operation and maintenance, and improve system capacity. The project plan is available for review on the city's website and in the City Clerk's office. City staff will be applying for low interest loans through a program at the Michigan Department of Environmental Quality and is proposing to raise sewer rates approximately 3% per year to cover the project and interest costs.

FINANCIAL IMPACT:

\$24,000,000 over a 5 year period. Year 1 projects are estimated at \$8,000,000.

BUDGET ACTION REQUIRED:

Amend the 2018/19 budget to include the approved projects for year 1.

STAFF RECOMMENDATION:

Approve the wastewater collection system upgrade plan and authorize the Mayor and City Clerk to sign a resolution in support of the plan.

**A RESOLUTION ADOPTING A FINAL PROJECT PLAN
FOR WASTEWATER SYSTEM IMPROVEMENTS AND
DESIGNATING AN AUTHORIZED PROJECT REPRESENTATIVE**

WHEREAS, the City of Muskegon recognizes the need to make improvements to its existing wastewater collection system; and

WHEREAS, the City of Muskegon authorized Prein&Newhof to prepare a Project Plan, which recommends the rerouting, rehabilitation and replacement of sanitary sewers and associated appurtenances to provide a more reliable and resilient wastewater collection system, replace aging and structurally deficient sewers, provide accessibility for operation and maintenance, and improve system capacity; and

WHEREAS, said Project Plan was presented at a Public Hearing held on June 26, 2018 and all public comments at the hearing or written comments submitted during the public comment period have been considered and addressed.

NOW THEREFORE BE IT RESOLVED, that the City of Muskegon formally adopts said Project Plan and agrees to implement the selected FY 2019 projects based on the selected alternatives for those projects.

BE IT FURTHER RESOLVED, that the Director of Municipal Services, a position currently held by LeighAnn Mikesell, is designated as the authorized representative for all activities associated with the project referenced above, including the submittal of said Project Plan as the first step in applying to the State of Michigan for a State Revolving Fund Loan to assist in the implementation of the selected alternative.

Yeas:

Nays:

I certify that the above Resolution was adopted by the City Commission of the City of Muskegon on June 26, 2018.

BY: Ann Meisch, City Clerk

Signature

Date

COMMISSION MEETING DATE: June 26, 2018

TO: Honorable Mayor and Commissioners

FROM: Jeffrey Lewis, Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1801434 – 839 Turner Ave

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **839 Turner Ave** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue civil infraction citations to the owner, agent or responsible party if they do not demolish the structure.

Location and ownership: This structure is located on Turner Ave between S. Getty Street and the dead end in the East Muskegon Neighborhood. The property is owned by April D. Heck, 839 Turner Ave, Muskegon MI 49442.

Staff Correspondence:

- April 23, 2018, Fire occurred causing substantial damage
- May 8, 2018, the “Notice & Order” was sent and posted for the June 7, 2018 HBA hearing
- May 24, 2018, a ten day notice was sent and posted.
- June 7, 2018, the HBA declared the structure substandard, dangerous and a public nuisance.

Owner Contact:

The owner’s granddaughter and her family were the occupants of the home. The granddaughter stated they did not have insurance for the home or for the contents. The owner or the owner’s granddaughter did not appear at the HBA hearing.

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$15, 500

Estimated cost to repair: \$75,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish all structures on the property

Permits obtained: None

Financial Impact: General Funds

Budget action required: None

Garage Assessed Value: \$7,900

Estimated cost to repair garage: \$6,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish the **garage structure only** on the property

Owner Contact:

No contact from the owner since the January 4, 2018 HBA hearing.
Owner(s) did not attend the January 4th HBA hearing.

Permits obtained: Demolition permit was obtained but canceled

DANGEROUS BUILDING INSPECTION REPORT

Owner SEALS TIFFANY
554 OAK AVE
MUSKEGON, MI 49442-2010

Enforcement # EN1711743

Property Address: 554 OAK AVE (**GARAGE ONLY**)

Parcel # 24-205-040-0011-30

Date completed: May 4, 2017

DEFICIENCIES:

1. Garage roof covering is deteriorated or missing
2. Garage roof has a hole(s)
3. Siding has peeling or no paint
4. Siding is missing or rotted in several locations
5. Service door is rotted and not attached
6. Window trim is rotted and not attached
7. One of two overhead doors has peeling paint and is rotted at the base

NOTE: Exterior only inspection conducted

Jay Paulson, Inspector

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)

If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.

Photo of the garage at 554 Oak St



COMMISSION MEETING DATE: May 22, 2018

TO: Honorable Mayor and Commissioners

FROM: Jeffrey Lewis, Director of Public Safety

RE: Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1801434 – 839 Turner Ave

SUMMARY OF REQUEST: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **839 Turner Ave** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days. It is further requested that administration be directed to obtain bids for the demolition of the structure and that the Mayor and City Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder or staff may issue civil infraction citations to the owner, agent or responsible party if they do not demolish the structure.

Location and ownership: This structure is located on Turner Ave between S. Getty Street and the dead end in the East Muskegon Neighborhood. The property is owned by April D. Heck, 839 Turner Ave, Muskegon MI 49442.

Staff Correspondence:

- April 23, 2018, Fire occurred causing substantial damage
- May 8, 2018, the “Notice & Order” was sent and posted for the June 7, 2018 HBA hearing
- May 24, 2018, a ten day notice was sent and posted.
- June 7, 2018, the HBA declared the structure substandard, dangerous and a public nuisance.

Owner Contact:

The owner’s granddaughter and her family were the occupants of the home. The granddaughter stated they did not have insurance for the home or for the contents. The owner or the owner’s granddaughter did not appear at the HBA hearing.

Financial Impact: General Funds

Budget action required: None

State Equalized value: \$15, 500

Estimated cost to repair: \$75,000

Staff Recommendation: To concur with the Housing Board of Appeals decision to demolish all structures on the property

Permits obtained: None

FIRE INSPECTION REPORT

Owner HECK APRIL D
839 TURNER AVE
MUSKEGON, MI 49442

Enforcement # EN1801434

Property Address: 839 TURNER AVE

Parcel # 24-595-000-0044-00

Date completed: April 24, 2018

DEFICIENCIES:

1. Roof shingles are curling, missing and roof needs to be replaced
2. Windows are broken, missing and several are boarded shut
3. Window awning are in disrepair and must be repaired or removed
4. Chimney is missing bricks and mortar. Repair or if chimney is no longer being used, remove chimney.
5. Aluminum siding is loose, damaged or missing
6. Front storm door has delaminated and must be replaced or removed
7. Rear entrance to the home is heavily damaged from fire. This are must be demolished and rebuilt.
8. Interior: Fire started in the laundry area located in the rear of the home. The entire interior is heavily damaged by fire, smoke and heat.
9. Basement windows are boarded shut. Basement windows may be boarded but must be painted to match the foundation paint color
10. Garage overhead doors are rotted, missing panels, broken or missing windows and has peeling paint.
11. Garage siding is loose, missing and has peeling paint.

NOTE: Not all deficiencies are related to the fire incident that occurred on April 23, 2018.

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

PHOTOS OF 839 Turner Ave







