CITY OF MUSKEGON

CITY COMMISSION WORKSESSION

February 10, 2025 @ 5:30 PM

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

- ☐ **CALL TO ORDER:**
- ☐ **NEW BUSINESS:**
  - **A. Lead Service Line Neighborhood Communication** Public Works
  - **B. City of Muskegon Park Rules** DPW- Parks
  - **C. Shaw Walker Affordable Housing Agreement** Economic Development
  - **D. Shaw Walker Community Benefits Agreement** Economic Development
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **ADJOURNMENT:**

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

To give comment on a live-streamed meeting the city will provide a call-in telephone number to the public to be able to call and give comment. For a public meeting that is not live-streamed, and which a citizen would like to watch and give comment, they must contact the City Clerk's Office with at least a two-business day notice. The participant will then receive a zoom link which will allow them to watch live and give comment. Contact information is below. For more details, please visit: www.shorelinecity.com
The City of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting with twenty-four (24) hours' notice to the City of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the City of Muskegon by writing or by calling the following:

Ann Marie Meisch, MMC. City Clerk. 933 Terrace St. Muskegon, MI 49440. (231)724-6705. clerk@shorelinecity.com

CITY OF MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: February 10, 2025	**Title:** Lead Service Line Neighborhood Communication
Submitted by: Dan VanderHeide, Public Works Director	**Department:** Public Works

Brief Summary:
Staff will present information on lead service line replacements happening in 2025 and beyond.

Detailed Summary & Background:
Staff have been working with the City's neighborhood associations to present a series of topics at their individual meetings. In the first quarter of 2025, staff focused on lead service line replacements. To inform the Commission and members of the public who may not attend a neighborhood association meeting, staff will present the information at the work session.

Goal/Focus Area/Action Item Addressed:

<u>Key Focus Areas:</u>

<u>Goal/Action Item:</u>
2027 GOAL 3: COMMUNITY CONNECTION - Digestible understandable and accessible internal and community communications

Amount Requested:
N/A

Budgeted Item:

Yes		No		N/A	X	

Fund(s) or Account(s):
N/A

Budget Amendment Needed:

Yes		No		N/A	X	

Recommended Motion:
For Discussion Purposes Only

Approvals:

Immediate Division Head	X	
Information Technology		
Other Division Heads		

Guest(s) Invited / Presenting:

No

Communication	X	
Legal Review		

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: February 10, 2025	**Title:** City of Muskegon Park Rules
Submitted by: Kyle Karczewski, Parks and Recreation Director	**Department:** DPW- Parks

Brief Summary:
Staff will present park rules, recommended by the Parks & Recreation Advisory Committee, for consideration and discussion.

Detailed Summary & Background:
The Parks & Recreation Advisory Committee (PRAC) workshopped rules and have recommended the attached document be presented as City of Muskegon Park rules. The rules listed were unanimously agreed upon via vote by the PRAC. While certain parks may have special rules for their unique park usage (such as Pere Marquette & Hackley Park), these rules will be across the board for all parks both community and neighborhood. Seasonal park rangers will assist enforcement of rules alongside Muskegon Public Safety.

Goal/Focus Area/Action Item Addressed:

Key Focus Areas:

Goal/Action Item:
2027 Goal 1: Destination Community & Quality of Life

Amount Requested:
n/a

Budgeted Item:

Yes		No		N/A	x	

Fund(s) or Account(s):
n/a

Budget Amendment Needed:

Yes		No		N/A	x	

Recommended Motion:
Staff recommends adopting the 2025 park rules update into our park system.

Approvals:

Immediate Division Head	x	
Information Technology		

Guest(s) Invited / Presenting:

No

Other Division Heads	x	
Communication		
Legal Review	x	

City of Muskegon Park Rules

1. **Hours of Operation**: 5am – 11pm
2. **No Littering**: Dispose of trash properly and use designated recycling bins if available.
3. **Leash Laws**: Pets should be kept on a leash. Some parks may have off-leash areas, but always check the rules. Clean up after your pet.
4. **No Smoking or Vaping**: Parks are smoke-free to maintain a clean environment and ensure everyone's health.
5. **No Alcohol**: Consumption of alcohol is prohibited in City of Muskegon Parks.
6. **No Fires or Grills**: Open flames are not allowed unless in designated areas for barbecuing or bonfires.
7. **Respect Wildlife**: Do not feed or disturb wildlife. Keep a safe distance and observe birds and animals from afar.
8. **Stay in Designated Areas**: Stick to marked trails and paths to protect natural habitats and prevent erosion. Only park in designated areas.
9. **No Vandalism**: Respect park property, including benches, signs, and playground equipment.
10. **Noise Levels**: Keep noise to a reasonable level to avoid disturbing other park-goers and nearby neighbors & residents
11. **No Unauthorized Motor Vehicles**: This includes ATVs, dirt bikes, or any motorized vehicles not designated for park use.
12. **Follow Event Rules**: If you’re attending a special event, adhere to any specific rules or guidelines provided.

CITY OF MUSKEGON

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: February 10, 2025	**Title:** Shaw Walker Affordable Housing Agreement
Submitted by:	**Department:** Economic Development

Brief Summary:
An overview of the proposed Affordable Housing Agreement between the Brownfield Authority, City of Muskegon, and Parkland Properties associated with the Shaw Walker Project.

Detailed Summary & Background:

Goal/Focus Area/Action Item Addressed:

<u>Key Focus Areas:</u>

<u>Goal/Action Item:</u>

Amount Requested:

Budgeted Item:

Yes		No		N/A		

Fund(s) or Account(s):

Budget Amendment Needed:

Yes		No		N/A		

Recommended Motion:

Approvals:

Immediate Division Head		
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

No

AFFORDABLE HOUSING AGREEMENT
CITY OF MUSKEGON

THIS AFFORDABLE HOUSING AGREEMENT ("Agreement") is entered into as of February 11, 2025 by and between **CITY OF MUSKEGON** ("City"), a Michigan public body corporate, with an address of 933 Terrace St, Muskegon, MI 49440, the **MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY** ("Authority"), a Michigan public body corporate, with an address of 933 Terrace St, Muskegon, MI 49440, and **PARKLAND PROPERTIES OF MICHIGAN – SHAW WALKER, LLC, SHAW WALKER OPPORTUNITY ZONE BUSINESS 1, LLC, SHAW WALKER OPPORTUNITY ZONE BUSINESS 2, LLC, SHAW WALKER OPPORTUNITY ZONE BUSINESS 3, LLC, AND SHAW WALKER OPPORTUNITY ZONE BUSINESS 4, LLC** (collectively, the "Developer"), all Michigan limited liability companies, with an address of 75 W Walton Avenue, Suite A, Muskegon, MI 49440.

WITNESSETH:

WHEREAS, the City has a vested interest to: (1) promote the health, safety and general welfare of the citizens of the City through the implementation of housing goals, objectives, and policies that support economically integrated housing opportunities in the development or rehabilitation of housing, (2) stimulate the production of rental housing available to moderate-income individuals or families, and (3) optimize benefits available to moderate-income residents by incentivizing affordable residential housing projects; and

WHEREAS, Developer proposes to develop the Property (defined below) which includes the redevelopment of four (4) parcels located at 965 W. Western Avenue, 920 & 930 Washington Avenue, and 1330 Division Street (collectively, the "Property"), into a mixed-use development with 538 new and 33 renovated residential for-sale and rental housing units, a rooftop pool, jacuzzi and deck; 2-rooftop clubhouses; sport courts; shared work spaces; and 8 large retail units with uses that compliment and provide the best available lifestyle for the community (the "Project"); and

WHEREAS, Developer intends to apply to the Michigan Strategic Fund (MSF) for a transformational brownfield plan (the "Plan") for the Project under the Brownfield Redevelopment Financing Act, Act 381 of 1996, as amended ("Act 381"), which the Plan, if approved by the MSF and the City, would afford Developer the opportunity to obtain reimbursement of certain eligible activities funded by the capture of certain eligible tax revenues generated at the Property and to obtain other tax benefits, as described in Act 381, determined to be necessary for the Project to be economically viable; and

WHEREAS, if the MSF, Authority, and the City approve the Plan for the Project, the Project may be eligible to capture up to 100% of state income tax capture revenues generated from the Project, if the Project described within the Plan are subject to a written, binding affordable housing agreement with the City; and

WHEREAS, Developer, in order to make the Project eligible to capture up to 100% of state income tax capture revenues, is willing to commit to certain affordable housing requirements subject to the terms and conditions set forth in this Agreement; and

WHEREAS, to encourage the successful completion of the Project and promote the development of inclusive mixed-income communities, the City, the Authority, and the Developer are entering into this Agreement to ensure and provide for affordable housing;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, the Authority, and Developer agree as follows:

1. **Definitions.** The following terms used throughout this Agreement shall be defined as follows:

   a. "Income Limit" means the maximum Household Income that may be earned, determined no less than 30 days nor more than 60 days prior to entering into a lease, by a household leasing an Affordable Unit. For the purposes of this Agreement, the relevant income limits at the time of a Lessee's initial lease or lease renewal, are those most recently published by the Michigan State Housing Development Authority (MSHDA) for Muskegon County, Michigan, and are 100% of the area median income (AMI) based on household size. After a Lessee's initial lease, or twelve months, whichever is greater, the Income Limit may be increased by 5% (i.e. 105% AMI) to accommodate reasonable increases in Household Income while avoiding unintended consequences to Lessees and maintaining the spirit of the Agreement.

   b. "Rent Limit" means the maximum amount that may be charged as monthly rent for an Affordable Unit based on the number of bedrooms in the Affordable Unit. The Rent Limit includes the base rent amount, any charges or required fees imposed by Developer that are paid by Lessees, and tenant-paid utilities, if any. The Rent Limit is published by MSHDA on an annual basis. Developer shall not assess unreasonable fees upon Lessees and shall not assess any fees upon Lessees of Affordable Units that are in addition to any fees assessed upon any other tenant.

   c. "Affordable Housing Requirement" means that if Developer obtains approval of the Plan for the Project, Developer shall, during the Affordability Period (as defined below), maintain not less than a rolling annualized average of twenty (20) residential rental dwelling units within the Project leased to households whose Household Income does not exceed the applicable Income Limit and for an amount that does not exceed the applicable Rent Limit. To satisfy the Affordable Housing Requirement, the rolling annualized average of twenty (20) residential rental dwelling units must be leased to households whose Household Income is equal to or less than 100% of AMI, and rented for an amount that does not exceed the Rent Limit for the Affordable Unit. Lessees shall be required to meet the applicable Income Limit at all times in order for the leased unit to qualify as an Affordable Unit.

   d. "Affordability Period" means the specific time periods for which residential rental dwelling units must be maintained as Affordable Units. The Affordability Period for the Project shall begin in 2028 and shall expire twenty (20) years thereafter, in accordance with the Plan. The Developer anticipates that the residential dwelling components of the Project will begin construction in the spring of 2025 and is estimated to be completed within approximately thirty-six (36) months.

e. "Grace Period" means the 12-month renewal period available for an eligible Lessee whose Household Income has exceeded the 100% AMI Income Limit for an Affordable Unit.

f. "Affordable Units" mean residential rental dwelling units within the Project that satisfy the Affordable Housing Requirement.

g. "AMI" means the area median family income for Muskegon County as most recently published by MSHDA.

h. "Income Checklist" means a checklist that contains information necessary to determine Household Income, along with supporting documentation, provided by or in a form approved by the City.

i. "Tenant Household Self Certification Form" means a form that contains information necessary for tenants to self-certify their Household Income, provided by or in a form approved by the City.

j. "Tenant Income and Rent Report" means a report containing information necessary to document tenant income and rental rates charged, provided by or in a form approved by the City.

k. "Lessee" means any individual(s) that enters into a lease with the Developer for any Affordable Unit in the Project.

l. "Household Income" means all income received or derived from any source required to be listed on the Income Checklist by (1) every individual named as an authorized leaseholder on the lease regardless of their age, and (2) every household member age 18 and older, including those listed as household members on the lease. Household income does not include income received by individuals under 18 years of age unless a Lessee, nor income of a lease guarantor who does not reside in the unit.

2. **Term of Agreement.** This Agreement shall be effective only upon (1) the final approval of the Plan for the Project by the City and MSF, and (2) execution of a development and reimbursement agreement for the Project, and shall expire at the end of the final Affordability Period.

3. **Obligations of Developer.** Developer shall meet the Affordable Housing Requirement, subject to the limitations herein, by constructing or developing, and leasing, Affordable Units subject to the terms and conditions of this Agreement.

4. **Affordable Unit Specifications.** The Affordable Units shall be comparable in overall quality of construction to the typical and similarly-situated comparable market-rate units contained in the Project.

5. **Income Certification**. During the Affordability Period, Developer shall conduct annual income certifications as described herein to ensure the Household Income of the Lessee does not exceed the applicable Income Limit. Income shall be determined according to the Part 5 method and shall include income sources as identified in 24 CFR 5.609. Developer shall obtain a completed Income Checklist, including all supporting documentation (a) no less than 30 days nor more than 60 days prior to the date of entering into a lease for an Affordable Unit, and (b) no less than 30 days nor more than 60 days prior to each fifth anniversary of such date. Developer shall, in the intervening years (i.e. years two, three, four, six, etc.) obtain a completed Tenant Household Self-Certification Form for each Lessee no less than 30 days nor more than 60 days prior to lease renewal. Developer shall retain all documentation collected pursuant to this Section 5 for a minimum of five years after receipt.

6. **Over Income**. An Affordable Unit is "over income" and temporarily out of compliance with the Affordable Housing Requirement when a Lessee experiences an increase in Household Income causing them to surpass the applicable Income Limit. In the event that the Lessee's Household Income is above 100% AMI, the Lessee's unit shall qualify as an Affordable Unit only for the duration of the Grace Period. Rent during the Grace Period will correspond with the applicable Rent Limit. As soon as practicable at the beginning of the Grace Period, the Developer shall provide appropriate notice to the Lessee describing the terms of this Agreement. Upon the expiration of the Grace Period, the unit will no longer qualify as an Affordable Unit and Developer shall rent a comparable next available unit as an Affordable Unit to maintain compliance with the Affordable Housing Requirement.

7. **Marketing of Affordable Units.** Developer will market the Project to both affordable and market rate applicants with the intention of meeting the requirements of this Agreement.

8. **Reporting to City.** Within ninety (90) days after the end of each calendar year of this Agreement, Developer shall provide the City of Muskegon Development Services Department ("Department") a report containing the following information:

   a. The total number of residential rental units for which an unconditional certificate of occupancy has been issued by the City of Muskegon and the total number of Affordable Units in the Project.

   b. The Tenant Income and Rent Report (TIRR) for the previous calendar year for all Affordable Units subject to this Agreement.

   c. The number of Affordable Units that are temporarily over income and out of compliance due to a previously qualified Lessee exceeding the applicable Income

Limit and the plan to comply with the Affordable Housing Requirement.

The Department's Director may either (a) accept the report, or (b) request documentation from Developer to verify some or all of the information in the report, which documentation may include but shall not be limited to income certification documentation and leases. Developer shall provide the requested documentation within thirty (30) days of receiving such request from the City. If the Department's Director determines that the Affordable Housing Requirement has not been met, the Department's Director, on behalf of the City, will provide the Developer with a written determination which shall describe the specific deficiency that resulted in the City's determination. Developer shall have a thirty (30) day cure period commencing after receipt of notice of failure to satisfy the terms of this Agreement. If Developer fails to cure the deficiency within this thirty (30) day cure period, the City may exercise its remedies with respect to a breach of this Agreement pursuant to Section 13.b. Each successive period of thirty (30) days following the initial breach in which Developer fails to cure the deficiency shall constitute an additional breach under this Section 8, and the City may exercise its remedies for each such breach pursuant to Section 13.b. Developer will provide access to the Project and all records that may pertain to this Agreement within thirty (30) days of request by the City, Department or Authority.

9. **<u>Notice and Notification of End of Affordability Period</u>.** At least three (3) years prior to the end of the Affordability Period, Developer shall submit notice to the tenants of the Affordable Units, the Department's Director, and City of Muskegon Economic Development Department indicating the end date of the Affordability Period.

At all times during the Affordability Period, every lease between Developer and a Lessee must contain notification to the Lessee of the benefit derived from this Agreement, the Lessee's obligations, and the terms under which the benefit would no longer be available, including (1) if in the future the Lessee's Household Income exceeds the applicable Income Limit for the Affordable Unit at the time of expiration or renewal of their lease, or (2) the expiration of the Affordability Period.

10. **<u>Obligations of City</u>.** The City shall make commercially reasonable efforts to assist Developer through City permitting, site plan approval, financing applications, and other City processes. Notwithstanding the foregoing obligation, the City's efforts do not guarantee final City approvals or City of Muskegon City Commission approval.

11. **<u>Review of Rents and Utility Allowances.</u>** The Developer will submit to the Department's Director, upon request but not more than once per year, the annual Rent Limits, inclusive of utility allowances based upon the most recently published Region C Utility Schedule and as published by MSHDA, and the Rent Limits including 100% AMI by household size based on the most recently published data.

12. **<u>Casualty Events</u>.** If the Affordable Units cease to be available as the result of fire, damage, or other casualty ("Casualty Event"), Developer shall provide prompt written notice of such Casualty Event to the City and the Authority, and Developer may use the insurance proceeds that are actually made available to it to restore the Affordable Units that have been damaged as a result of the Casualty Event. Developer shall not be required to spend any money to restore the damaged Affordable Units in an amount over and above the insurance proceeds that are actually made available to such entity for the restoration of the Affordable Units damaged as a result of a Casualty Event. However, if Developer elects to not fully restore all Affordable Units damaged as a result of a Casualty Event, Developer shall, within a commercially reasonable amount of time, rent a number of next available comparable units as Affordable Units to make up for the number of Affordable Units not fully restored to maintain compliance with the Affordable Housing Requirement.

The Affordability Period for the Affordable Units which are the subject of the Casualty Event shall be tolled during the period of time such units do not exist.

13. **Default and Remedies.** Any failure to satisfy the obligations in this Agreement shall be a breach of this Agreement. The City's remedies under this Agreement are as follows:

a. Violation of Agreement With Respect to Affordable Housing Requirement. If Developer markets or charges rent in a manner that is inconsistent with the Affordable Housing Requirement, the City may declare an event of default by providing notice to the Developer. Upon Developer's receipt of such notice, Developer shall have sixty (60) calendar days to cure the default by: (1) marketing or charging rent in a manner that is consistent with this Agreement; and (2) Developer paying liquidated damages in the following amount:

(i) two times the excess of actual rent received by Developer over the Rent Limit that would otherwise apply for each unit not in compliance; plus

(ii) the actual enforcement costs of the City with respect to the Affordable Units that are subject to such damages.

If the City is entitled to pursue its remedies under this Section 13.a, then Developer shall provide the City an accounting of the actual rent received by Developer as referenced in Section 13.a.i above. If Developer fails to do so within thirty (30) days after Developer's receipt of a request for such information, then, with respect to the units that Developer has failed to provide such information only, (i) the City may calculate the damages under Section 13.a using the applicable market rental rate that would apply to each Affordable Unit absent the affordability restriction that Developer has reported to the City pursuant to Section 8 above (in lieu of the actual rent received).

Upon the payment of any such liquidated damages, Developer shall be deemed to be in compliance under this Agreement with respect to each Affordable Unit for the time period to which the liquidated damages that have been paid pertain. If Developer does not pay such liquidated damages within thirty (30) days of being invoiced, the Authority may retain an amount up to and including the amount of liquidated damages invoiced from any and all payments it would otherwise be required to make to Developer pursuant to the Development and Reimbursement Agreement associated with the Plan.

b. Failure to Satisfy Reporting Obligations to City: If Developer fails to provide the information to the City required under Section 8 above (after the passage of all applicable notice and cure periods), then the City's sole remedy shall be to extend the Affordability Period for an additional three (3) months for each breach of Section 8.

c. Payment into Affordable Housing Fund: Any amounts required to be paid to the City under this Agreement may be utilized by the City for its affordable housing fund, or for any other purpose the City determines, including ensuring that eligible tenants who overpaid the Rent Limit are made whole. Developer is still obligated to pay the City such amounts under this Agreement regardless of whether or not such City fund exists.

14. No Limitation on Remedy. Nothing contained in this Agreement shall limit the exercise of any remedy contained in any other agreement or available in law or equity.

15. Notices. All notices, consents, approvals, requests and other communications, herein collectively called "Notices", required or permitted under this Agreement shall be given in writing, signed by an authorized representative of City, Authority, or Developer, as the case may be, and either mailed by certified or registered mail return receipt requested; or sent by recognized overnight delivery service for next day delivery, and addressed as follows:

To the City/Authority:

Jake Eckholm
Economic Development Director
jake.eckholm@shorelinecity.com
(231) 724-4141
Muskegon City Hall
933 Terrace St,
Muskegon, MI 49440-1397

With Copy to:

City Attorney
Parmenter Law
601 Terrace St.
Muskegon, MI 49440

To Developer:

Jonathan Rooks
75 W. Walton Ave, Suite A
Muskegon, MI 49440
jon@parklandgr.com

With Copy to:

Jared T. Belka
Warner Norcross + Judd LLP
150 Ottawa Ave NW
Grand Rapids, MI 49503

All Notices shall be effective upon receipt. Any party to this Agreement may change its address for the receipt of Notices to an address in the United States or designate additional addresses to whom copies of Notices shall be sent at any time by giving Notice thereof to the others as herein provided.

16. **Third Party Management**. The Parties acknowledge that Developer may choose to enter into a contract with a third-party property management firm ("Property Manager") and that the Property Manager may, as part of its contract with Developer, perform certain services described in this Agreement. Developer acknowledges it remains responsible for all obligations, liable for all defaults and subject to all remedies under this Agreement regardless of the performance of any Property Manager.

17. **Miscellaneous Provisions.**

a. This Agreement may be modified or amended in whole or in part only by mutual written agreement.

b. A failure by any party to give notice or insist on the immediate performance of any right that it has under this Agreement shall not constitute a waiver of that right or any other right under this Agreement.

c. This Agreement shall not be assigned, transferred, or conveyed without the prior written consent of the other parties, which consent will not be unreasonably withheld, conditioned, or delayed.

d. The parties agree that all rights and remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or in any other remedy available at law or in equity.

e. Nothing contained in this Agreement, nor any act of Developer, the Authority, or the City shall be deemed or construed by any of the parties hereto or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or of any association or relationship other than that of contracting parties.

f. Notwithstanding any other provisions of this Agreement, any required permitting, licensing, or other regulatory approvals by any governmental authority shall be subject to and undertaken in accordance with the established procedures and requirements of such governmental authority, as may be applicable, with respect to similar projects and in no event shall the governmental authority by virtue of any provision of this Agreement be obligated to take any actions concerning regulatory approvals.

g. If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

h. The laws of the State of Michigan shall govern the validity, performance and enforcement of this Agreement.

i. This Agreement, and all the documents and agreements described or referred to herein, including, without limitation, any exhibits hereto, constitute the full and complete agreement between the parties hereto with respect to the subject matter hereof, and supersedes and controls in its entirety over any and all prior agreements, understandings, representations and statements whether written or oral by each of the parties hereto.

j. The headings used in connection with the Sections and paragraphs of this Agreement are for convenience only and shall not be deemed to construe or to limit the meaning of the language of this Agreement.

k. This Agreement may be executed in counterparts, each of which shall be deemed to be an original document and together shall constitute one instrument.

[SIGNATURE PAGE FOLLOWS]

The City, the Authority, and the Developer, by and through their duly authorized officers and representatives, have executed this Agreement as follows:

CITY OF MUSKEGON

____
Ken Johnson, Mayor

____
Ann Meisch, Clerk

MUSKEGON BROWNFIELD REDEVELOPMENT AUTHORITY

____
Martha Bottomley, Chairperson

DEVELOPER

Jonathan L Rooks
____
Jonathan L. Rooks, on behalf of Developer entities

Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: February 10, 2025	**Title:** Shaw Walker Community Benefits Agreement
Submitted by:	**Department:** Economic Development

Brief Summary:
An overview of the proposed Community Benefits Agreement between the City of Muskegon and Parkland Properties related to the Shaw Walker Project.

Detailed Summary & Background:

Goal/Focus Area/Action Item Addressed:

<u>Key Focus Areas:</u>

<u>Goal/Action Item:</u>

Amount Requested:

Budgeted Item:

Yes		No		N/A		

Fund(s) or Account(s):

Budget Amendment Needed:

Yes		No		N/A		

Recommended Motion:

Approvals:

Immediate Division Head		
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

No

COMMUNITY BENEFITS AGREEMENT

THIS COMMUNITY BENEFITS AGREEMENT (the "Agreement") is made and entered into this 11th day of February, 2025, by and between **City of Muskegon**, a Michigan municipal corporation, of 933 Terrace St., Muskegon, MI 49440, (hereinafter referred to as "City"); and **Parkland Properties of Michigan – Shaw Walker, LLC, Shaw Walker Opportunity Zone Business 1, LLC, Shaw Walker Opportunity Zone Business 2, LLC, Shaw Walker Opportunity Zone Business 3, LLC,** and **Shaw Walker Opportunity Zone Business 4, LLC,** all Michigan limited liability companies, having a mailing address at 75 W. Walton Ave., Ste. A, Muskegon, MI 49440 (hereinafter referred to as "Developer") (collectively City and Developer are referred to herein as the "Parties" or individually as a "Party").

WITNESSETH:

WHEREAS, Developer is undertaking redevelopment of the former Shaw Walker factory property, consisting of four (4) parcels located at 965 W. Western Avenue, 920 & 930 Washington Avenue, and 1330 Division Street, Muskegon, MI 49440 (the "Property"), into a vibrant mixed-use development (the "Project").

WHEREAS, City determined the Project will act as a major economic development catalyst for the region and will have a significant beneficial effect on the surrounding property values within the City, as well as supporting the creation of significant new business and employment opportunities.

WHEREAS, in lieu of providing direct financial support via grant, loan, or income tax capture funding, City desires to support the Project through approval of various forms of indirect consideration to Developer, including, but not limited to, approval of property tax abatements, and approval of other economic considerations, including a commitment to make, substantial improvements in close proximity to the Project and certain development support, including, but not limited to, approval of a Transformation Brownfield Plan ("TBP"), and infrastructure improvements outlined in Exhibit A.

WHEREAS, as an additional benefit to the community, the City and Developer have agreed to enter into this Agreement to further define these commitments, which the Parties agree are of comparable value and pertain directly to the development of the Project.

NOW THEREFORE, in furtherance of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **City Consideration.** The City agrees to perform various items to support the Project, including but not limited to the items outlined in Exhibit A (the "City Commitments").

2. **Developer Commitments.** In consideration of the City Commitments, which Developer acknowledges is of a comparable or in greater of value, the Developer agrees to perform the commitments set forth in Exhibit B (the "Developer Commitments") and in this Agreement for the benefit area immediately surrounding and impacted by the Project.

3. **Community Engagement.** Developer has and will continue to actively engage with the

community for development input throughout the term of development of the Project. City agrees to facilitate at least one (1) meeting annually between the Developer and the community beginning on the first anniversary of this Agreement and for a period of no more than three (3) years following the Effective Date of this Agreement. The purpose of such meetings will be to discuss impacts of the Project on the community in connection with the development of the Project and to coordinate the implementation of the Developer's efforts to reasonably address such impacts.

4. **Compliance Reports.** Developer shall submit to the City annual compliance reports during the Term of this Agreement on or before April 30th that summarize the Developer's progress on and compliance with the commitments set forth on Exhibit B. Upon completion of the Developer Commitments, Developer is not obligated to submit to the City annual compliance reports.

5. **Recordkeeping and Reporting.** Each Party will maintain information pertinent to its activities under this Agreement for at least three (3) years following the Term of this Agreement, unless otherwise terminated early by mutual agreement of the Parties.

6. **Indemnification.** Developer will indemnify, defend, and hold the City harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses, including, without limitation, reasonable fees and expenses for attorneys, expert witnesses and other consultants, (collectively, "City Claims") that may be imposed upon, incurred by, or asserted against the City or its departments, officers, employees, or agents by reason of any failure by the Developer to perform its obligations under this Agreement, except where remedies or enforcement are provided by applicable law, and excluding any City Claims to the extent caused by the gross negligence or willful misconduct of the City or its departments, officers, employees, or agents.

7. **Non-Discrimination.** Developer will, in addressing community impacts as set for in Section 1 herein, or in performing its activities set forth herein, refrain from refusing, restricting, withholding, or denying any accommodations, services, privileges, advantages or facilities or otherwise discriminating, whether directly or indirectly, on the basis of race, color, ethnicity, national origin, religious beliefs or practices, age, disability, pregnancy, marital status, parental status, military status, employment or educational status, gender, sex, sexual orientation, gender identity or expression, or any other protected or designated classification by as established by applicable State law.

8. **Breach and Default.** The failure by either Party to comply with its obligations under this Agreement, which is not caused by the other Party's failure to comply with its own obligations under this Agreement, will constitute a material breach of this Agreement.

   A. In the event of Developer's material breach of this Agreement, Developer will be considered to be in default of this Agreement upon Developer's failure to cure such breach within sixty (60) days after written notice of such breach and demand to cure by the City, provided, however, that if the nature of Developer's default is such that more than sixty (60) days is reasonably required for its cure, then Developer will not be deemed to be in default if Developer, with the City's acknowledgement and consent, commences such cure within said period and thereafter diligently pursues such cure to completion. In the event of Developer's default of this Agreement beyond applicable cure periods, the City may seek specific performance of the terms of this Agreement.

B. In the event of City's material breach of this Agreement, City will be considered to be in default of this Agreement upon City's failure to commence its cure of such breach and thereafter diligently pursue such cure to completion within sixty (60) days after written notice of such breach and demand to cure by Developer, provided, however, that if the nature of City's default is such that more than sixty (60) days is reasonably required for its cure, then City will not be deemed to be in default if City, with Developer's acknowledgement and consent, commences such cure within said period and thereafter diligently pursues such cure to completion. In the event of City's default of this Agreement beyond applicable cure periods, the Developer may seek specific performance of the terms of this Agreement.

9. **Effective Date, Term, and Termination.** This Agreement has no force or effect until the date upon which it has been fully executed by the duly authorized representative(s) of the City, upon approval by the City of Muskegon Commission ("Effective Date"). This Agreement will remain in effect until completion of the Project and completion of the commitments set forth in Exhibit A and Exhibit B unless otherwise mutually terminated early by the Parties.

10. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to be duly given if delivered or mailed first class, postage prepaid to the following addresses until notification of a different address:

To the City	City Manager 933 Terrace St. Muskegon, MI 49440
With Copy to:	City Attorney 601 Terrace St. Muskegon, MI 49440
To the Developer	Jonathan Rooks 75 W. Walton Ave., Suite A Muskegon, MI 49440
With Copy to:	David Charron 5500 Northland NE, Ste. H Grand Rapids, MI 49525
	Jared T. Belka Warner Norcross + Judd LLP 150 Ottawa Ave NW Grand Rapids, MI 49503

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties; further, this Agreement shall supersede and/or replace any oral or written Agreement(s) relating to this

subject matter entered into by the Parties before the date of this Agreement.

12. **Independent Parties.** Each Party acknowledges that the City and Developer are independent of each other and do not intend, as a result of this Agreement or otherwise, to become a joint venture, partners, employees, servants, agents, representatives, contractors, or any type of related business entities to one another with respect to the subject matter of this Agreement.

13. **Counterparts and Facsimile Signatures.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. The signature page from one or more counterparts may be detached and reattached to any other executed counterparts of this Agreement. The Parties also agree that facsimile or scanned electronic signatures shall be considered the same as an original signature for all purposes under this Agreement.

14. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Michigan. Any legal suit or action or proceeding arising out of this Agreement will be instituted in a court in Muskegon County or the Western District Federal Court. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

15. **Assignability**. The Parties may not delegate or assign this Agreement, or any portion thereof, either voluntarily or involuntarily, or by operation of law. In the event that Developer sells, assigns or transfers (whether by operation of law, foreclosure or otherwise) the Project to a non-Affiliate (exception to condominium sales of the for-sale units), Developer's successor shall be bound by all of the obligations herein that accrue on and after the date of such sale, assignment, or transfer, provided that Developer shall remain solely responsible for any breach of this Agreement that occurs prior to the date of such sale, assignment, or transfer. "Affiliate" means any entity that controls, is controlled by or under common control with Developer.

16. **Force Majure.** In the event of a delay in the Developer's performance of its obligations under this Agreement due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, fires, floods, epidemics, or severe weather, the time for performance of such obligation shall be extended for the period of the such delays; provided that Developer must within thirty (30) days after the beginning of such delay, have first notified City in writing of the causes thereof and requested an extension for the period of the enforced delay. In the event that there is any dispute as to what constitutes such force majeure event, the determination City, in its sole determination, will control.

17. **Authority of City; Amendment.** Notwithstanding anything in this Agreement or otherwise to the contrary, the City is not authorized or obligated to perform any of its obligations pursuant to this Agreement until this Agreement has been fully executed by the duly authorized representative(s) of the City and has been approved by the Muskegon City Commission. This Agreement shall not be amended, altered, or terminated except by a writing executed by the Parties. Any amendments or modifications must likewise be duly signed and be approved by the Muskegon City Commission.

18. **Waiver.** The waiver by either Party of any breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach of any provision of this Agreement.

19. **Pronouns.** The pronouns and relative words herein used are written in the singular only. If more than one party join in the execution hereof, such pronouns and words shall be read as if written in plural.

20. **Effect.** The covenants herein shall bind the heirs, successors, assignees, administrators and executors of the respective parties.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals the day and year first above written.

CITY:

CITY OF MUSKEGON

____

By: Kenneth Johnson
Its: Mayor

____

By: Ann Meisch
Its: Clerk

DEVELOPER:

____

By: Jonathan L. Rooks
Its: Authorized Agent on behalf of Developer entities

EXHIBIT A

CITY COMMITMENTS

1. City shall, at its expense within six (6) months of the date of this Agreement, abandon the 12" watermain owned by City ("City Main") from the existing locations on Developer's Property, as shown in Exhibit C. In the alternative, if City is required to relocate the City Main in accordance with the commitment outlined in paragraph 3 below, Developer agrees to allow the City to perform this abandonment and relocation work at the earlier of: eighteen (18) months from the execution of this Agreement; or within a reasonable period following the failure of the City Main.

2. City shall, at its expense, maintain the existing storm and sanitary sewer lines (collectively, the "City Sewer Lines") that are owned by City and located on Developer's Property, as shown in Exhibit C. City shall have the right to access the Property in coordination with the Developer to repair and maintain the City Sewer Lines. City agrees to restore Developer's Property to a comparable condition for any impact caused as a result of City's repair and maintenance of the City Sewer Lines. In the event the City elects to relocate the City Sewer Lines to an area within the City's right-of-way, Developer agrees to allow the City to abandon the City Sewer Lines in lieu of removing them from Developer's Property, and City's right to access Developer's Property to repair, maintain, and restore the City Sewer Lines shall terminate.

3. City shall, at its expense, provide the Project connection points to the City's watermain, storm water, and sewer from the City's existing infrastructure to the planned points of connection (i.e. property line) with the existing buildings and proposed new construction townhomes identified in the approved Planned Unit Development (PUD).

4. Unless otherwise agreed to by the parties, within eighteen (18) months of the date of this Agreement, City shall, at its expense, perform a roadway realignment of Western Avenue consistent with the approved PUD design, attached as Exhibit D; provided, however, City and Developer may first modify the PUD, as necessary, to increase the distance of the sidewalk locations from the existing buildings and proposed new construction buildings identified in the PUD.

5. City agrees to cooperatively pursue relocation of the existing powerlines immediately adjacent to the existing building along W. Western, which currently impact the ability of the City to serve the Project with proper life safety, and thereby jeopardizing the health, welfare and safety of the residents and general public. City and Developer agree to work with the third-party electrical provider to cover or offset the cost of this relocation. In the event Developer is required contribute to the cost of this relocation, City agrees to share in the cost of this relocation with Developer up to the lesser of 75% of the relocation cost or $200,000. If the third-party electrical provider agrees to cover the cost of this relocation, neither the City or Developer shall be required to provide any contribution.

EXHIBIT B

DEVELOPER COMMITMENTS

1. Developer shall formalize an agreement ("Workforce Training Agreement") with Muskegon Public Schools ("MPS"), Muskegon Community Education Center ("MCEC"), or other comparable program operated by MPS, to provide workforce training development opportunities in the hospitality industry to program participants and MPS general education students for a period of no fewer than five (5) years. Developer shall provide a copy of the Workforce Training Agreement to the City upon request. The Workforce Training Agreement shall be executed prior to the commencement of any City improvements outlined in Exhibit A of this Agreement.

2. Developer shall pay for one (1) capital or public asset improvement at the Hartshorn Marina Park within two (2) years of the Effective Date of this Agreement. This capital asset shall offer an enhancement to the Park designed to meaningfully improve the quality of life for City residents and visitors. It may include, but is not limited to, the installation of playground equipment or any other asset outlined in the Parks Master Plan for the Hartshorn Marina Park that meaningfully improves the quality of life for City residents and visitors, as mutually agreed upon by Developer and City. Following Developer's installation, City agrees to accept sole ownership, ongoing maintenance, and liability of the capital or public asset improvement.

3. Developer shall pay for one (1) capital or public asset improvement, as mutually agreed upon by the Nims Neighborhood Association Board ("Nims Association") and Developer, within two (2) years of the Effective Date of this Agreement. This capital asset may include, but is not limited to, playground equipment at Nims Neighborhood Park, improvements to the City Right of Way in the Nims Neighborhood, or any other asset that meaningfully improves the quality of life for Nims Neighborhood residents and visitors, as mutually agreed upon by Developer and Nims Association. Following Developer's installation, the Parties agree either the Nims Association or City will take sole ownership, ongoing maintenance, and liability of the capital or public asset improvement.

4. Developer agrees to cooperatively pursue relocation of the existing powerlines immediately adjacent to the existing building along W. Western, which currently impact the ability of the City to serve the Project with proper life safety, and thereby jeopardizing the health, welfare and safety of the residents and general public. City and Developer agree to work with the third-party electrical provider to cover or offset the cost of this relocation. In the event Developer is required contribute to the cost of this relocation, Developer agrees to cover the balance of the amount identified in Exhibit A and any remaining amounts not otherwise covered, offset, or imposed on the Developer. If the third-party electrical provider agrees to cover the cost of this relocation, neither the City or Developer shall be required to provide any contribution.

EXHIBIT C

UTILITY MAP

PHASE 1 - 350 APARTMENTS & 1 RETAIL & 1 RESTAURANT

350 APARTMENTS @ 1 SPACE PER APT.	= 350 SPACES REQ.
* PLUS 10% EXTRA FOR GUESTS	= 35 SPACES REQ.
4,253 SQFT RETAIL @ 3 SPACES PER 1,000 SQFT	= 13 SPACES REQ.
124 PERSON REST. @ 1 SPACE PER 2 PERSONS	= 62 SPACES REQ.
PHASE 1	= 470 SPACES REQUIRED

457 SPACES SHOWN W/ 11 BARRIER FREE SPACES

PHASE 2 - 100 APARTMENTS & 70 CONDOS & 35 TOWNHOUSE UNITS

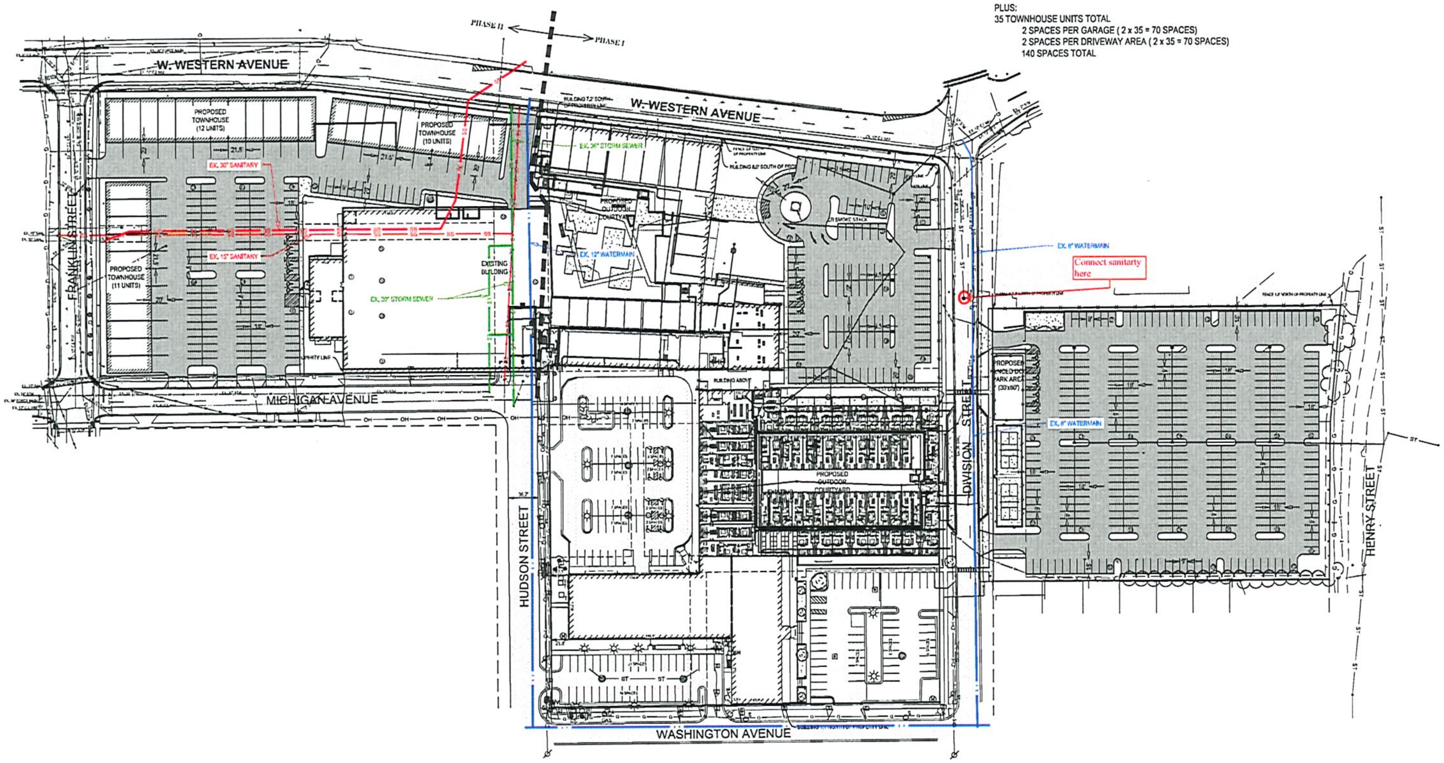
100 APARTMENTS @ 1 SPACE PER APT.	= 100 SPACES REQ.
70 CONDOS @ 2 SPACES PER CONDO	= 140 SPACES REQ.
* PLUS 10% EXTRA FOR GUESTS	= 24 SPACES REQ.
PHASE 2	= 264 SPACES REQUIRED

133 SPACES SHOWN W/ 7 BARRIER FREE SPACES (OPEN AIR)
112 SPACES SHOWN (COVERED)
246 TOTAL SPACES SHOWN

PLUS:
35 TOWNHOUSE UNITS TOTAL
2 SPACES PER GARAGE (2 x 35 = 70 SPACES)
2 SPACES PER DRIVEWAY AREA (2 x 35 = 70 SPACES)
140 SPACES TOTAL

N

SCALE 1" = 60'



Parkland Properties
75 W Walton Ave., Suite A,
Muskegon, MI 49440
231-722-7001
https://parklandmi.com/

37 OTTAWA NW
SUITE 700
GRAND RAPIDS, MI 49503-2900 USA
TEL +1.616.771.0909
www.ghafari.com

CONSULTANT INFORMATION

REGISTRATION SEAL

REV	DATE	DOC REL ## - DESCRIPTION
	02/09/24	DOC REL 03 - PRICING
	01/22/24	DOC REL 02 - DD

PROJECT #	2300029
PROJECT MANAGER	M. VANWIENEN
DESIGNED BY	Designer
DRAWN BY	Author
QUALCHECK	Checker

SHEET TITLE

OVERALL SITE LAYOUT PLAN

C-100
SHEET NUMBER

Project Manager: RYAN T. YSSELDYKE, P.E.
Drawn by: STEVEN A. MORRIS
HEI Project Number: 23-11-013

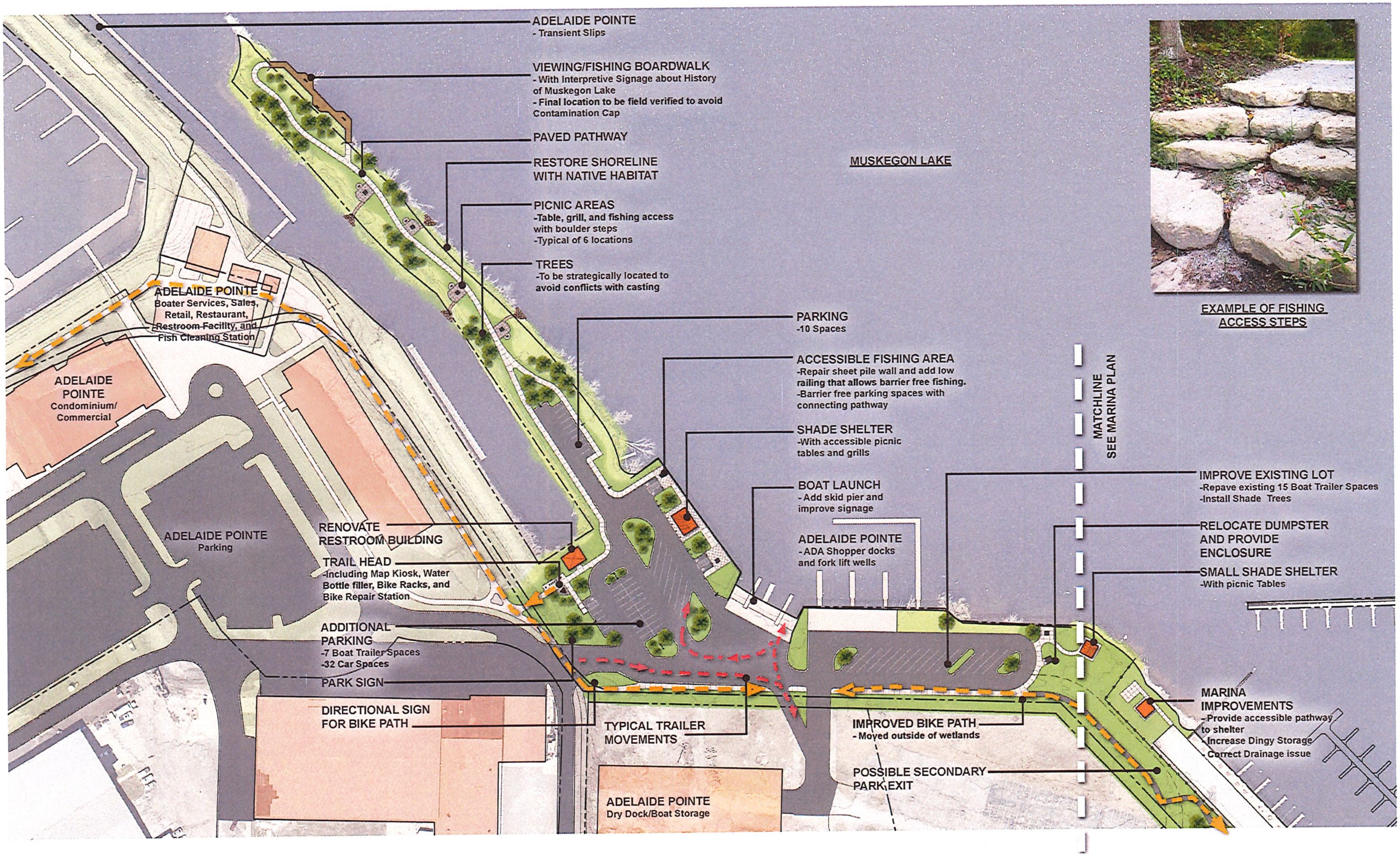
SHAW WALKER
902 WASHINGTON AVE
MUSKEGON, MICHIGAN
PT. OF THE NE 1/4 , SECT 25, T10N, R17W
CITY OF MUSKEGON, MUSKEGON CO., MI.

The Surveyor's / Engineer's liability for any and all claims, including but not limited to those arising out of the Surveyor's / Engineer's professional services, negligence, gross misconduct, warranties or misrepresentations shall be deemed limited to an amount no greater than the service fee.

HOLLAND ENGINEERING
220 Hoover Boulevard
Holland, Michigan 49423-3766
www.hollandengineering.com
T 616-392-5938 F 616-392-2116

EXHIBIT D

WESTERN AVENUE REALIGNMENT



NORTH

0' 50' 100' 200'
SCALE IN FEET: 1' = 50'

DATE
12.17.2024
PROJECT NO.
2220

MCSA GROUP, Inc.
Landscape Architects and Architects
EAST GRAND RAPIDS • MICHIGAN

MUSKEGON

HARTSHORN PARK REVISED CONCEPT PLAN
CONCEPTUAL PARK PLANNING
CITY OF MUSKEGON, MICHIGAN