

CITY OF MUSKEGON

CITY COMMISSION MEETING

JUNE 8, 2021 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **ROLL CALL:**
- ☐ **HONORS/AWARDS/PRESENTATIONS:**
- ☐ **PUBLIC COMMENT ON AN AGENDA ITEM:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes** City Clerk
 - B. Lakeshore Art Festival Grant** City Clerk
 - C. Lakeside Social District Permit Recommendation** Economic Development
 - D. 9th Street – Engineering Services Agreement Amendment #001**
Public Works
 - E. McCrea Field Basketball Court** Public Works
 - F. Filtration Plant Communications Tower** Public Works – Filtration
 - G. Musketawa Trail Streetlight Locations** Public Works
- ☐ **PUBLIC HEARINGS:**
 - A. Transmittal of 2021-2022 Proposed Budget** Finance
[Recommended-FY2021-22-Budget-Mtg-5-25-21.pdf \(muskegon-mi.gov\)](#)
- ☐ **UNFINISHED BUSINESS:**
- ☐ **NEW BUSINESS:**
 - A. Mercy Health Arena Roof Lease** Public Works
 - B. Mercy Health Arena Power Purchase Agreement** Public Works
 - C. Request for Proposal Approvals – YEP Programs** Community & Neighborhood Services
- ☐ **ANY OTHER BUSINESS:**
- ☐ **PUBLIC COMMENT:**

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

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

ADA POLICY: THE CITY OF MUSKEGON WILL PROVIDE NECESSARY AUXILIARY AIDS AND SERVICES TO INDIVIDUALS WHO WANT TO ATTEND THE MEETING UPON TWENTY-FOUR HOUR NOTICE TO THE CITY OF MUSKEGON. PLEASE CONTACT ANN MARIE MEISCH, CITY CLERK, 933 TERRACE STREET, MUSKEGON, MI 49440 OR BY CALLING (231) 724-6705 OR TTY/TDD DIAL 7-1-1-22 TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: June 8, 2021	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve the minutes of the May 25, 2021 Regular Meeting.	
Detailed Summary: N/A	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: To approve the minutes.	
For City Clerk Use Only: Commission Action:	

CITY OF MUSKEGON

CITY COMMISSION MEETING

MAY 25, 2021 @ 5:30 P.M.

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

MINUTES

The Regular Commission Meeting of the City of Muskegon was held electronically with the Mayor, Vice Mayor, and Commissioners participating via Zoom – a remote conferencing service, Clerk staff present at 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, May 25, 2021.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron (Muskegon, MI), Vice Mayor Eric Hood (Muskegon, MI), Commissioners Ken Johnson (Muskegon, MI), Dan Rinsema-Sybenga (Muskegon, MI), Willie German, Jr. (Muskegon, MI), Teresa Emory (Muskegon, MI), and Michael Ramsey (Muskegon, MI), City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

HONORS/AWARDS/PRESENTATIONS:

- A. 2021-2022 Budget Presentation Only** – Finance will present information regarding the proposed 2021-2022.

Q & A will take place at the June 7, 2021 Worksession Meeting

Beth Lewis-outgoing Finance Director, and Ken Grant-incoming Finance Director, reviewed the Fiscal Year 2021-2022 budget with the City Commission. There will be an opportunity for questions on specific items at the June 7, 2021 Worksession meeting. All are encouraged to contact the Finance Department with any questions about tonight's presentation over the next few weeks.

B. Updates/Input from Chief Lewis Regarding Public Safety

Chief Lewis updated the City Commission on recent shootings in the area. Chief Lewis encourages residents/witnesses to please come forward with any information they have on criminal activity. Questions were asked and comments were provided by the City Commission. The Police Department is always strategizing and making decisions about staffing based on current circumstances.

PUBLIC COMMENT ON AN AGENDA ITEM: Public comments were received.

2021-50 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the May 10, 2021 Worksession, May 11, 2021 Regular Meeting, and May 17, 2021 Special Meeting.

STAFF RECOMMENDATION: To approve the minutes.

B. 2021-2022 MML Membership Dues City Clerk

SUMMARY OF REQUEST: Approval to pay the 2021-22 MML dues in the amount of \$10,545.00. This is an increase of \$146.

MML Dues are \$9,586.00; Legal Defense Fund: \$959.00; Total: \$10,545.00

STAFF RECOMMENDATION: To approve the payment of dues to the Michigan Municipal League in the amount of \$10,545.00

C. Request for Authorization to Sign Planning & Economic Development

SUMMARY OF REQUEST: Request to authorize Hope Griffith from the Planning Department to sign purchase agreements and closing documents for property transactions on behalf of the City.

STAFF RECOMMENDATION: Approval to authorize and for the Mayor and Clerk to sign the resolution.

D. Campbell Field Site Grading Public Works

SUMMARY OF REQUEST: Authorize the award of the RFP – Campbell Field Site contract to the low bidder, Terra Contractors, including Alternate #001.

Staff solicited bids for site preparation and rehabilitation of the baseball fields located at Campbell Field.

Bids received are as follows: Alternate #001

- | | |
|-------------------------------------|-------------|
| • \$77,900.00 – Terra Contractors | \$17,500.00 |
| • \$84,595.00 – Accurate Excavators | \$17,200.00 |
| • \$192,000.00 – TJM Services | \$42,000.00 |

Alternate #001 includes installation of sidewalk along the Barclay Street frontage of the park.

This project proposes to utilize funding generated from the PILOT agreement with Royale Glen Townhouses.

The RFP was posted prior to the updated purchasing policy as such the old purchasing policy was utilized for this document. Terra Contracting is located within the City of Muskegon, they do not propose to utilize prevailing wages on this project.

The project would be constructed during the summer of 2021.

AMOUNT REQUESTED: \$95,400.00 AMOUNT BUDGETED: \$156,000

FUNDS OR ACCOUNTS: 404-TBD

STAFF RECOMMENDATION: Approve the award of the Campbell Field Site Prop contract to the low bidder, Terra Contracting with the Alternate #1 selected.

F. Sale – 304 Mason Avenue Planning

SUMMARY OF REQUEST: City staff is seeking authorization to sell the City-owned home at 304 Mason to Branden M. Goller.

The city constructed this house as part of the phase two of our infill housing program. Staff is recommending that the purchase agreement be approved, and 304 Mason Avenue be sold to Branden M. Goller at a cost of \$189,900.

STAFF RECOMMENDATION: Authorize the Code Coordinator to complete the sale of 304 Mason Avenue, as described in the purchase agreement and to have the Mayor and Clerk sign the deed.

H. Downtown Muskegon Social District Permit Recommendation Economic Development

SUMMARY OF REQUEST: The City Commission must recommend approval of the Michigan Liquor Control Commission permits of participating licensed establishments in the Downtown Muskegon Social District.

With the establishment of the Downtown Muskegon Social District, participating licensed establishments must receive a Social District permit from the Michigan Liquor Control Commission. The MLCC must first receive a recommendation for approval from the City Commission before granting the permits. You handled the initial eight such requests at your August 25 and September 8, 2020 meetings and added others as they have been since. The resolution is for Muskegon Brewing Co. LLC, d/b/a No Name Saloon, which is seeking a Social District permit from the state and seeking City Commission recommended approval. The Social District plan identifies 22 potential participating licensees within the district. Other licensed establishments may file a Social District permit application in the future.

STAFF RECOMMENDATION: To approve the resolution recommending Michigan Liquor Control Commission approval of Social District permits in the Downtown Muskegon Social District and to direct the City Clerk to certify the City Commission action with the MLCC.

I. Traffic Control Order Traffic/Engineering

SUMMARY OF REQUEST: To approve the submitted Traffic Control Order #68- (2021) and authorize staff to install a “Stop Sign” on the Southwest corner of 4th

Street at Western Avenue. This location is currently unregulated as the exit from the Convention Center.

STAFF RECOMMENDATION: To approve the installation of a “Stop Sign” at the Southwest corner of 4th Street at Western Avenue per the submitted Traffic Control Order #68-(2021).

Motion by Commissioner Rinsema-Sybenga, second by Commissioner German, to approve the consent agenda as presented, minus item E and G.

ROLL VOTE: Ayes: Emory, Johnson, Gawron, Hood, Ramsey, German, and Rinsema-Sybenga

Nays: None

MOTION PASSES

2021-51 REMOVED FROM CONSENT AGENDA:

E. Concession Agreement – TASTEE BBQ-N-CHICKEN Public Works

SUMMARY OF REQUEST: Staff is requesting permission to enter into a 1-year Contractual Concession Agreement, for 2021, with Keith Carter of TASTEE BBQ-N-CHICKEN, for a Concession at Pere Marquette Park, as outlined in their proposal. The business will be operating a mobile food truck, per their proposal. Commission is \$1,000.00 and 5% gross receipts annually.

STAFF RECOMMENDATION: Authorize staff to enter into a 1-year Contractual Concession Agreement with Keith Carter of TASTEE BBQ-N-CHICKEN, at Pere Marquette Park for the 2021 season.

Motion by Commissioner Emory, second by Commissioner Rinsema-Sybenga, to authorize staff to enter into a 1-year contractual concession agreement with Keith Carter of TASTEE BBQ-N-CHICKEN, at Pere Marquette Park for the 2021 season.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, Ramsey, German, Rinsema-Sybenga, and Emory

Nays: None

MOTION PASSES

F. Muskegon Lakeside Social District Plan and Map Approval Economic Development

SUMMARY OF REQUEST: With state enabling legislation for Social Districts, city staff is proposing a second Muskegon Social District in the Lakeside Business District for approval of a plan and district map and filing them with the Michigan Liquor Control Commission.

Public Act 124 of 2020 allows cities to create Social Districts and within them Common Areas where alcoholic beverages from participating licensed

establishments can be possessed and consumed outside of the establishments' service areas. A Downtown Muskegon Social District was approved in August 2020 and has created fun and new energy in the downtown, while assisting participating restaurants and bars to expand business during COVID-19 restrictions. Lakeside Business District establishments have requested the City Commission adopt a second, smaller Social District in Lakeside. The Lakeside district would be managed by the city's business development manager in conjunction with a number of city departments. The plan addresses a year-round, seven-day-a-week Social District in terms of marked boundaries, hours of operation, enforcement, security, design of a cup sticker, sanitation, marketing and entertainment. Since the May 10 work session, the draft plan and accompanying map have been developed. The district would include three establishments. Two non-profit social clubs are included along with the Safe Harbor Great Lakes Marina in the common area to provide flexibility of future optional participation. Staff has brought together a working group of participating establishment representatives to agree to the funding model of downtown with a 35-cent sticker per cup charge that would pay for all of the city's cost in implementing and managing the district. A resolution supporting the Muskegon Lakeside Social District plan and accompanying district map is attached. If approved, the resolution, plan and map will be sent to the Michigan Liquor Control Commission, operational details set and implementation begun. Participating licensee permit recommendation approvals will come to the City Commission in separate items if the district is approved.

STAFF RECOMMENDATION: To approve the Muskegon Lakeside Social District and map and direct the clerk and mayor to file it with the Michigan Liquor Control Commission and authorize staff to implement.

Motion by Commissioner Emory, second by Commissioner Johnson, to approve the Muskegon Lakeside Social District and map and direct the clerk and mayor to file it with the Michigan Liquor Control Commission and authorize staff to implement.

ROLL VOTE: Ayes: Gawron, Hood, Ramsey, German, Rinsema-Sybenga, Emory, and Johnson

Nays: None

MOTION PASSES

2021-52 PUBLIC HEARINGS:

A. Public Hearing on Harbor 31 LLC (Viridian Shores) Redevelopment Brownfield Plan, 150 Viridian Drive Economic Development

SUMMARY OF REQUEST: To hold a public hearing on the request for a Brownfield Plan Amendment for the Harbor 31 LLC (Viridian Shores) and to consider the

resolution.

Harbor 31 LLC proposes a Brownfield Amendment for its first phase of the Viridian Shores at Harbor 31 residential development on 3.5 acres at 150 Viridian Drive, site of the former Teledyne Continental Motors industrial facility. Plans for the \$15.2 million initial investment for redevelopment activities include the construction of 33 two-story residential homes (including a combination of 15 single-family free-standing homes and 18 multifamily duplex style homes). Development is expected to start in Spring 2021 and continue through 2023. Future project phases include the construction of a 118-unit senior living community, a 134-unit Boardwalk Flats market-rate apartment building, a 44,000 square foot retail and 120-unit apartment complex, a four-story 107 room hotel, a retail boat sales and on-demand boat storage facility and a 100 slip marina with eight dedicated shopper docks. The project is expected to have a significant economic impact to the area through the creation of over 1,200 construction-related jobs along with nearly 550 FTE (full-time equivalent) jobs.

The initial plan includes \$4.018M in eligible costs. It is a local-only property tax capture plan, although through statute the plan is eligible for \$76,900 for eligible environmental costs captured by state educational millage through EGLE. The local only EGLE eligible costs are \$782,000 and include \$600,000 for due care and \$80,000 for response activities. Local only MSF eligible costs are \$3.159M and include \$40,000 demolition, \$60,000 asbestos abatement, \$380,000 site preparation and \$730,000 for infrastructure improvements. The initial capture for phase one is estimated at \$1.81M over the 26 years. Capture of tax increment revenues for Developer reimbursement is anticipated to commence in 2025 (after the sunset of the Smart Zone tax abatement for the property) and end in 2047, a total of 26 years. This Plan Amendment assumes approximately five years of additional capture of tax increment revenues (following Developer reimbursement) for deposit into a Local Brownfield Revolving Fund, if available. There is a 15 percent contingency in the plan. A request for 5% interest is included for all accrued and unreimbursed eligible activities on a yearly basis. There is an annual \$10,000 administrative fee paid to the BRA. The BRA approved the Harbor 31 LLC Brownfield Amendment at its May 11, 2021 meeting.

STAFF RECOMMENDATION: To close the public hearing and approve the Brownfield Amendment for Harbor 31 LLC (Viridian Shores) at 150 Viridian Drive with the resolution, authorizing the Mayor and City Clerk to sign.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Emory, to close the public hearing and approve the Brownfield Plan Amendment for Harbor 31 LLC (Viridian Shores) at 150 Viridian Drive with the resolution, authorizing the Mayor and City Clerk to sign.

ROLL VOTE: Ayes: Hood, Ramsey, German, Rinsema-Sybenga, Emory, Johnson, and Gawron

Nays: None

MOTION PASSES

B. Public Hearing - Final PUD for 151 N Causeway Planning

SUMMARY OF REQUEST: Request for final Planned Unit Development approval at 151 N Causeway for the redevelopment of the former power plant site for new bulk materials storage for shipping, by Verplank Family Holding Company. The plans include a new 10,000 square foot storage/office building. A site plan is provided.

STAFF RECOMMENDATION: To approve the final Planned Unit Development approval at 151 N Causeway for the redevelopment of the former power plant site for new bulk materials storage for shipping, with the following conditions.

1. The raised drain field must not impede drainage from the bike path or impact the use of that facility in any way.
2. There must be at least two foot of clearance along the edge of the paved trail, free of any obstructions.
3. The applicant must also receive a stormwater permit from the Muskegon County Drain Commissioners office.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Vice Mayor Hood, second by Commissioner Johnson, to close the public hearing and approve the final Planned Unit Development approval at 151 N Causeway for the redevelopment of the former power plant site for new bulk materials storage for shipping, with the following conditions:

1. The raised drain filed must not impede drainage from the bike path or impact the use of that facility in any way.
2. There must be at least two foot of clearance along the edge of the paved trail, free of any obstructions.
3. The applicant must also receive a stormwater permit from the Muskegon County Drain Commissioners office.

ROLL VOTE: Ayes: Ramsey, German, Rinsema-Sybenga, Emory, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

C. Public Hearing – Sewer Project Plan Public Works

SUMMARY OF REQUEST: To host a public hearing relative to the updated City of

Muskegon Project Plan for Sanitary Sewer upgrades. The plan highlights the next few years of sewer improvement projects.

Staff contracted with Prein & Newhof to complete a required update to our previous project plan which is required to maintain eligibility for State Revolving Fund (SRF) financing and grants. These programs are used to finance a relatively large portion of our water and sewer work in recent years including projects on Peck Street and Amity Avenue that are currently underway.

This plan represents an update to the previously published 2019 plan which includes a continuation of many of the projects identified in that plan, as well as a shift in future focus towards reduction/elimination of inflow and infiltration issues within the City sewer system as a result of last years' record high water levels and treatment costs.

The project plan is currently available on the City website for review.

Prein & Newhof will offer a short presentation of the project plan and public comment on the plan is encouraged.

STAFF RECOMMENDATION: Close the public hearing, approve the wastewater collection system project plan, and authorize the Mayor and Clerk to sign a resolution in support of the plan.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Ramsey, second by Commissioner Johnson, to close the public hearing, approve the wastewater collection system project plan, and authorize the Mayor and Clerk to sign a resolution in support of the plan.

ROLL VOTE: Ayes: German, Rinsema-Sybenga, Emory, Johnson, Gawron, Hood, and Ramsey

Nays: None

MOTION PASSES

D. Public Hearing - Request for Industrial Development District from Camcar Plastics Economic Development

SUMMARY OF REQUEST: Camcar Plastics is requesting the establishment of an Industrial Development District at their 1732 Glade Street location so that they may apply for an Industrial Facilities Tax Exemption for a planned addition.

Pursuant to Michigan Public Act 198 of 1974, industrial entities may request a local unit of government create an Industrial Development District around one or more parcels which makes these eligible for Industrial Facilities Tax Exemptions (IFTs). The statute requires a public hearing take place prior to the City Commission's consideration of any such district, which can take place during the same meeting. The only required mailing is to those entities in the district, which is only the applicant.

STAFF RECOMMENDATION: A motion to open the public hearing on the request from Camcar Plastics to establish an Industrial Development District at 1732 Glade Street.

PUBLIC HEARING COMMENCED: No public comments were received.

Motion by Commissioner Ramsey, second by Commissioner German, to close the public hearing on the request from Camcar Plastics to establish an Industrial Development District at 1732 Glade Street.

ROLL VOTE: Ayes: Rinsema-Sybenga, Emory, Johnson, Gawron, Hood, Ramsey, and German

Nays: None

MOTION PASSES

2021-53 NEW BUSINESS:

A. Resolution Establishing Industrial Development District at 1732 Glade Street
Economic Development

SUMMARY OF REQUEST: Camcar Plastics is requesting the establishment of an Industrial Development District at their 1732 Glade Street location so that they may apply for an Industrial Facilities Tax Exemption for a planned addition.

Pursuant to Michigan Public Act 198 of 1974, industrial entities may request a local unit of government create an Industrial Development District around one or more parcels which makes these eligible for Industrial Facilities Tax Exemptions (IFTs). The statute requires a public hearing take place prior to the City Commission's consideration of any such district, which can take place during the same meeting. The only required mailing is to those entities in the district, which is only the applicant. In 2019 the City of Muskegon Economic Development Department worked with the Camcar ownership to support their acquisition of 1.8 acres surrounding their building that was formerly part of the vacant Brunswick property. This was completed, and their intention is to build an addition that will allow their shipping trucks to stop blocking the street. They plan to apply for an Industrial Facilities Tax Exemption, which requires the establishment of the proposed district. The City Commission will have the opportunity to hear cause, ask questions, and get feedback regarding that application. The approval of the district does not automatically guarantee the tax abatement.

STAFF RECOMMENDATION: A motion to approve the resolution establishing an Industrial Development District at 1732 Glade Street as presented.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Ramsey, to approve the resolution establishing an Industrial Development District at 1732 Glade Street as presented.

ROLL VOTE: Ayes: Emory, Johnson, Gawron, Hood, Ramsey, German, and

Rinsema-Sybenga

Nays: None

MOTION PASSES

ANY OTHER BUSINESS: Commissioner German asked questions about the Citizen's Police Review Board and what it does.

Commissioner Johnson raised the issue of meeting in person, discussion took place.

PUBLIC COMMENT: Public comments were received.

ADJOURNMENT: The City Commission adjourned at 8:27 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8, 2021	Title: LAF Grant
Submitted By: Ann Meisch	Department: City Clerk
Brief Summary: The City of Muskegon is in the process of pursuing a grant from the Michigan Council for Arts and Cultural Affairs (MCACA) in the amount of \$25,000 to support the 2022 Lakeshore Art Festival. Grant funds will support artists' fees (performers and artists), art supplies for the interactive art activities, and marketing efforts to attract a diverse audience. Per the grant requirements, the funds will be matched 1:1 from the Festival budget through sponsorship dollars.	
Detailed Summary:	
Amount Requested:	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the submission of the grant application to MCACA.	
For City Clerk Use Only: Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 6-8-2021	Title: Lakeside Social District Permit recommendation
Submitted By: Dave Alexander	Department: Economic Development
Brief Summary: The City Commission must recommend approval of the Michigan Liquor Control Commission permits of participating licensed establishments in the Muskegon Lakeside Social District.	
Detailed Summary: With the establishment of the Muskegon Lakeside Social District, participating licensed establishments must receive a Social District permit from the Michigan Liquor Control Commission. The MLCC must first receive a recommendation for approval from the City Commission before granting the permits. The attached resolution is for Wonderland Distilling Co., 1989 Lakeshore Drive Suite B and Lakeside Food and Spirits, Inc, dba Marine Tap Room, 1983 Lakeshore Drive. Both are seeking a Social District permit from the state and seeking City Commission recommended approval. The Lakeside Social District plan contains up to five potential participating licensees within the district. Other licensed establishments may file a Social District permit application in the future.	
Amount Requested: None	Amount Budgeted:
Fund(s) or Account(s):	Fund(s) or Account(s):
Recommended Motion: To approve the resolution recommending Michigan Liquor Control Commission approval of Social District permits in the Muskegon Lakeside Social District and to direct the City Clerk to certify the City Commission action with the MLCC.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

RESOLUTION RECOMMENDING MUSKEGON LAKESIDE SOCIAL DISTRICT

PERMIT APPLICATION APPROVAL

City of Muskegon

County of Muskegon, Michigan

Minutes of a Regular Meeting of the City Commission of the City of Muskegon, County of Muskegon, Michigan (the "City"), held at Muskegon City Hall, 933 Terrace, Muskegon, MI 49440 and virtually online on the city's Facebook page on the 8th day of June, 2021 at 5:30 p.m., prevailing Eastern Time.

PRESENT:

ABSENT:

The following preamble and resolution were offered by Commissioner _____ and supported by Commissioner _____.

WHEREAS, in accordance with Public Act 124 of 2020 on the establishment of Social Districts within a Michigan city; and

WHEREAS, COVID-19 pandemic has caused unprecedented economic disruption worldwide and within our local business community; and

WHEREAS, restaurants and bars, which have been key contributors to the ongoing success of the Muskegon Lakeside Business District, have been and will continue to be hard hit by the economic impact of the pandemic; and

WHEREAS, increasing availability of outdoor spaces for dining and drinking will help Lakeside and its businesses recover; and

WHEREAS, Public Act 124 of 2020 empowers local governments like the City of Muskegon to enhance its shopping areas with Social Districts and accompanying Common Areas where purchasers may consume and possess alcoholic beverages sold by multiple qualified Michigan Liquor Commission licensees who obtain Social District Permits; and

WHEREAS, the City Commission has designated a Muskegon Lakeside Social District and Common Area, and

WHEREAS, the city has received requests from multiple qualified licensees to recommend approval of their Social District Permit applications by the Michigan Liquor Control Commission, and

WHEREAS, the licensed establishments are contiguous to the Common Area within the Social District, and

WHEREAS, the City Commission desires to recommend approval of the Social District Permit applications,

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Muskegon Lakeside Social District Permit Applications from the following licensees are recommended by the City Commission to consideration and approval by the Michigan Liquor Control Commission:
 - a. Wonderland Distilling Co., 1989 Lakeshore Drive, Suite B
 - b. Lakeside Food and Spirits, Inc. dba Marine Tap Room, 1983 Lakeshore Drive
2. The City Clerk is authorized and directed to provide each applicant with a certification of this action in the form specified by the Michigan Liquor Control Commission.

AYES:

NAYS:

RESOLUTION DECLARED APPROVED.

Stephen J Gawron, Mayor

Ann Marie Meisch, City Clerk

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on June 8, 2021 and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being Act 267, Public Acts of Michigan, 1976 and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

Ann Marie Meisch, City Clerk



Social District Permit Application

Part 1 - Licensee Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it appears on your Articles of Incorporation / Organization.

Licensee name: Lakeside Food and Spirits, Inc d/b/a MAELINE TAP			
Address: 1983 Lakeshore Dr			
City: Muskegon	State: MI	Zip Code: 49441	
Contact name: Mike Kordecki	Phone: 734-577-7358	Email: Ryckman@MSN.com	

Part 2 - Required Documents & Fees

☐ Local Governmental Unit Approval ☐ Approval from the local governmental unit (city council, township board, village council) is required to be submitted with this application (See page 2 for approval form)	
☐ \$70.00 Inspection Fee (MLCC Fee Code 4036)	TOTAL DUE: Make checks payable to State of Michigan
☐ \$250.00 Social District Permit Fee (MLCC Fee Code 4081)	

Leave Blank - MLCC Use Only

Part 3 - Signature of Licensee

Under administrative rule R 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcements officials who have jurisdiction over the licensee. Approval of this application by the Michigan Liquor Control Commission does not waive any of these requirements. The licensee must obtain all other required state and local licenses, permits, and approvals for this business before using this permit for the sale of alcoholic liquor on the licensed premises.

I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing **false or fraudulent** information is a violation of the Liquor Control Code pursuant to MCL 436.2003.

The person signing this form has demonstrated that they have authorization to do so and have attached appropriate documentation as proof.

 Print Name of Licensee & Title	 Signature of Licensee	5/26/2021 Date
--	---	--------------------------

Please return this completed form and fees to:

Michigan Liquor Control Commission

Mailing address: P.O. Box 30005, Lansing, MI 48909

Hand deliveries: Constitution Hall - 525 W. Allegan Street, Lansing, MI 48933

Overnight deliveries: 2407 N. Grand River Avenue, Lansing, MI 48906

Fax with Credit Card Authorization to: 517-284-8557

MTR



Social District Permit Application

Part 1 - Licensee Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it appears on your Articles of Incorporation / Organization.

Licensee name: WONDERLAND DISTILLING CO		
Address: 1989 LAKESHORE DRIVE STE B		
City: MUSKEGON	State: M	Zip Code: 49441
Contact Name: ALLEN SERIO	Phone: 231.638.1051	Email: ALLEN@WONDERLANDDISTILLING.COM

Part 2 - Required Documents & Fees

☒ Local Governmental Unit Approval <i>Approval from the local governmental unit (city council, township board, village council) is required to be submitted with this application (See page 2 for approval form)</i>	
☒ \$70.00 Inspection Fee (MLCC Fee Code 4036)	TOTAL DUE: \$320.00 Make checks payable to State of Michigan
☒ \$250.00 Social District Permit Fee (MLCC Fee Code 4081)	
Leave Blank - MLCC Use Only	

Part 3 - Signature of Licensee

Under administrative rule R 436.1003, the licensee shall comply with all state and local building, plumbing, zoning, sanitation, and health laws, rules, and ordinances as determined by the state and local law enforcements officials who have jurisdiction over the licensee. Approval of this application by the Michigan Liquor Control Commission does not waive any of these requirements. The licensee must obtain all other required state and local licenses, permits, and approvals for this business before using this permit for the sale of alcoholic liquor on the licensed premises.

I certify that the information contained in this form is true and accurate to the best of my knowledge and belief. I agree to comply with all requirements of the Michigan Liquor Control Code and Administrative Rules. I also understand that providing **false** or **fraudulent** information is a violation of the Liquor Control Code pursuant to MCL 436.2003.

The person signing this form has demonstrated that they have authorization to do so and have attached appropriate documentation as proof.

ALLEN SERIO / OWNER

Print Name of Licensee & Title

Signature of Licensee

06/02/2021

Date

Please return this completed form and fees to:
Michigan Liquor Control Commission
Mailing address: P.O. Box 30005, Lansing, MI 48909
Hand deliveries: Constitution Hall - 525 W. Allegan Street, Lansing, MI 48933
Overnight deliveries: 2407 N. Grand River Avenue, Lansing, MI 48906
Fax with Credit Card Authorization to: 517-284-8557

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8 th , 2021	Title: 9 th Street – Engineering Services Agreement Amendment #001
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is seeking approval of Amendment #001 to the Engineering Services Agreement with Fleis & VandenBrink related to the engineering services provided on the 9 th Street sewer upgrade project.	
Detailed Summary: Staff is requesting approval of an amendment to the Engineering Services Agreement with Fleis & Vandenbrink in the amount of \$39,736.50. This request is due to a number of changed conditions and additional work that staff requested of F&V above and beyond the original scope of work. The original ESA was signed in 2018 in the amount of \$203,520. The amendment covers additional work required by staff and various other agencies to obtain additional survey and permits that were not fully anticipated within the original project proposal. Additionally several items of work became more complex between the original estimate and the final construction resulting in additional construction inspection time required to complete the oversight. The project as a whole was originally budgeted for \$2,217,530 which included a construction contact value of \$1,878,869.50 plus engineering and other expenses as well as a 6% (\$125,520.57) contingency. The project construction contract finished at \$1,913,824.24, leaving a remaining contingency of \$90,565.83. With the proposed adjustment to the ESA the project is still below the overall target budget. Staff is recommending approval of the Engineering Services Agreement Amendment.	
Amount Requested: \$39,736.50	Amount Budgeted: \$90,565.83 = Remaining Contingency
Fund(s) or Account(s): 590-91852	Fund(s) or Account(s): 590-91852
Recommended Motion: Authorize staff to approve Amendment #001 in the amount of \$39,736.50 to the Engineering Services Agreement with Fleis & VandenBrink.	
Check if the following Departments need to approve the item first:	

Police Dept. ☐

Fire Dept. ☐

IT Dept. ☐

For City Clerk Use Only:

Commission Action:



May 13, 2021

Leo Evans, City Engineer
City of Muskegon
Department of Public Works
1350 Keating Ave.
Muskegon, MI 49442

**RE: SRF Project 1: 9th Street Area Sewers and Project 6: Getty Street Forcemain
Additional Engineering Request**

Dear Leo:

We are submitting this request for additional engineering relating to the 9th Street Sanitary Sewer Improvements. The following outlines the additional Scope of Services and Fee.

SCOPE OF ADDITIONAL ENGINEERING SERVICES

- Additional inspection with the Bore & Jack operation. A 17 day time extension was granted to the contractor due to the wood and debris encountered during the bore & jacking. We are requesting the same 17 days for inspection time (17 days x \$1,050/day = \$17,850).
- Additional survey & design for the Houston Ave. sewer addition: No Charge.
- Additional inspection for the Houston Ave. sewer addition (5 days x \$1,050/day = \$5,250).

Below is a summary of our original engineering fees, previously approved additional services, and our requested additional inspection time.

9TH STREET AREA SEWERS - SRF

Phase	Fee
Original Design Engineering	\$71,160.00
Original Construction Engineering	\$109,830.00
Previously Approved Additional Services (items italicized below)	
• <i>Bike Path Topo Survey</i>	\$5,735.00
• <i>Michigan Shore Railroad Right of Way Permit Fee</i>	\$3,500.00
• <i>Angled Parking Layout, Options & Cost Estimates</i>	\$3,870.00
• <i>Soil Borings & Report for MDOT Bore & Jack Permit</i>	\$2,250.00
• <i>Heritage Landing Sewer Easement</i>	<u>\$1,281.50</u>
Total of Previously Approved Additional Services	\$16,636.50
Requested Additional Services Shown Above	\$23,100.00
9th Street Total	220,762.50

316 Morris Avenue, Suite 230
Muskegon, MI 49440
P: 231.726.1000
F: 231.726.2200
www.fveng.com

GETTY STREET LIFT STATION - SRF

Phase	Fee
Original Design Engineering	\$13,330
Original Construction Engineering	\$9,200
Getty Street Total	\$22,530

We appreciate your review and consideration. Please feel free to contact us with questions.

Sincerely,

FLEIS & VANDENBRINK



Don DeVries, PE
Project Manager

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8 th , 2021	Title: McCrea Field Basketball Court
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is seeking authorization to award a contract in the amount of \$43,265.00 to Ryerson Brothers Excavating for removal and replacement of the existing basketball court at McCrea Field.	
Detailed Summary: Staff solicited bids for replacement of the McCrea Field basketball court via an RFP process. The low bidder was Ryerson Brothers Excavating. Staff is further recommending that we accept the alternate bid presented for the colored concrete court. The proposed court will be constructed of concrete, similar to the courts at Seyferth Park, the alternate bidding process will utilize several different colorations of concrete to construct the out-of-bounds, three point, and foul line areas which will require less maintenance to maintain as opposed to paint in the long run.	
Amount Requested: \$43,265.00	Amount Budgeted: \$50,000.00
Fund(s) or Account(s): 101-70751 (With CDBG Reimbursement)	Fund(s) or Account(s): 101-70751 (With CDBG Reimbursement)
Recommended Motion: Authorize staff contract with Ryerson Brothers Excavating in the amount of \$43,265.00 for the construction of a new basketball court at McCrea Field.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

PROPOSED REMOVALS AND WHITE CONCRETE PAD

PROP 320 SYD TOPSOIL SURFACE, FURN. 4 INCH
PROP 320 SYD HYDROSEEDING
BACKFILL TO CONCRETE AND FEATHER
OUT TO EXISTING GRADE

PROP 5640 SFT
CONC. BASKETBALL COURT, 4"
*DO NOT USE CURING COMPOUND.
USE PLASTIC SHEETING TO RETAIN MOISTURE THROUGH CURING.
STAIN AND SEALING WILL NOT FUNCTION WITH COMPOUND.

SAWED JOINT GRID 9.4' X 10'
1010 LF RELIEF CUTS TO MEET MDOT
R-39-1 STANDARD.DETAILED IN RIGHT
PANE OF THIS PAGE.

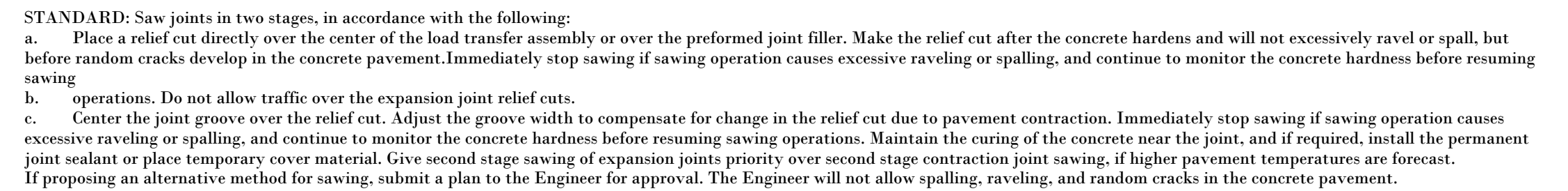
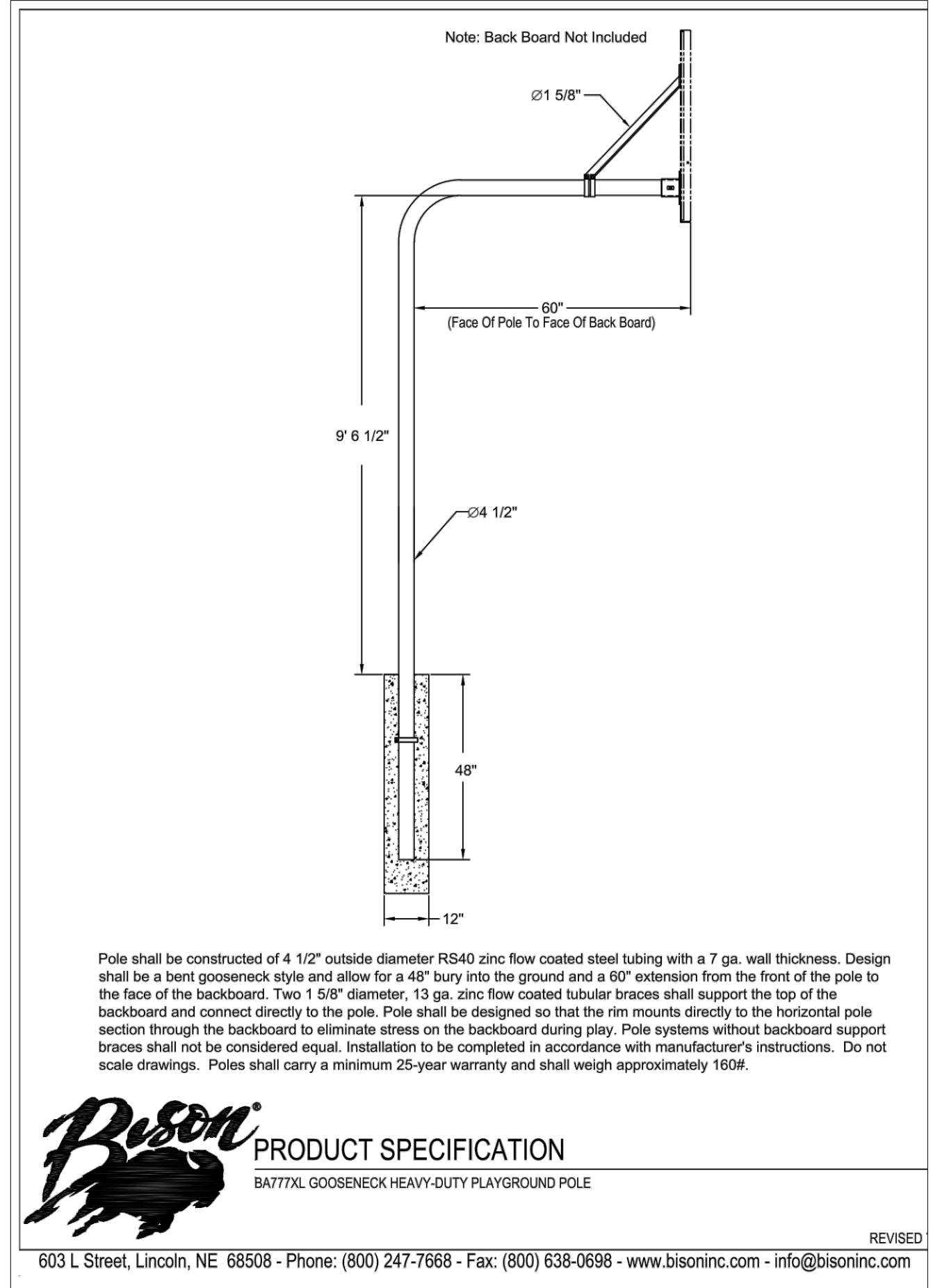
700 SYD. PAVT REM

REMOVE HOOP, POLE AND FOOTING

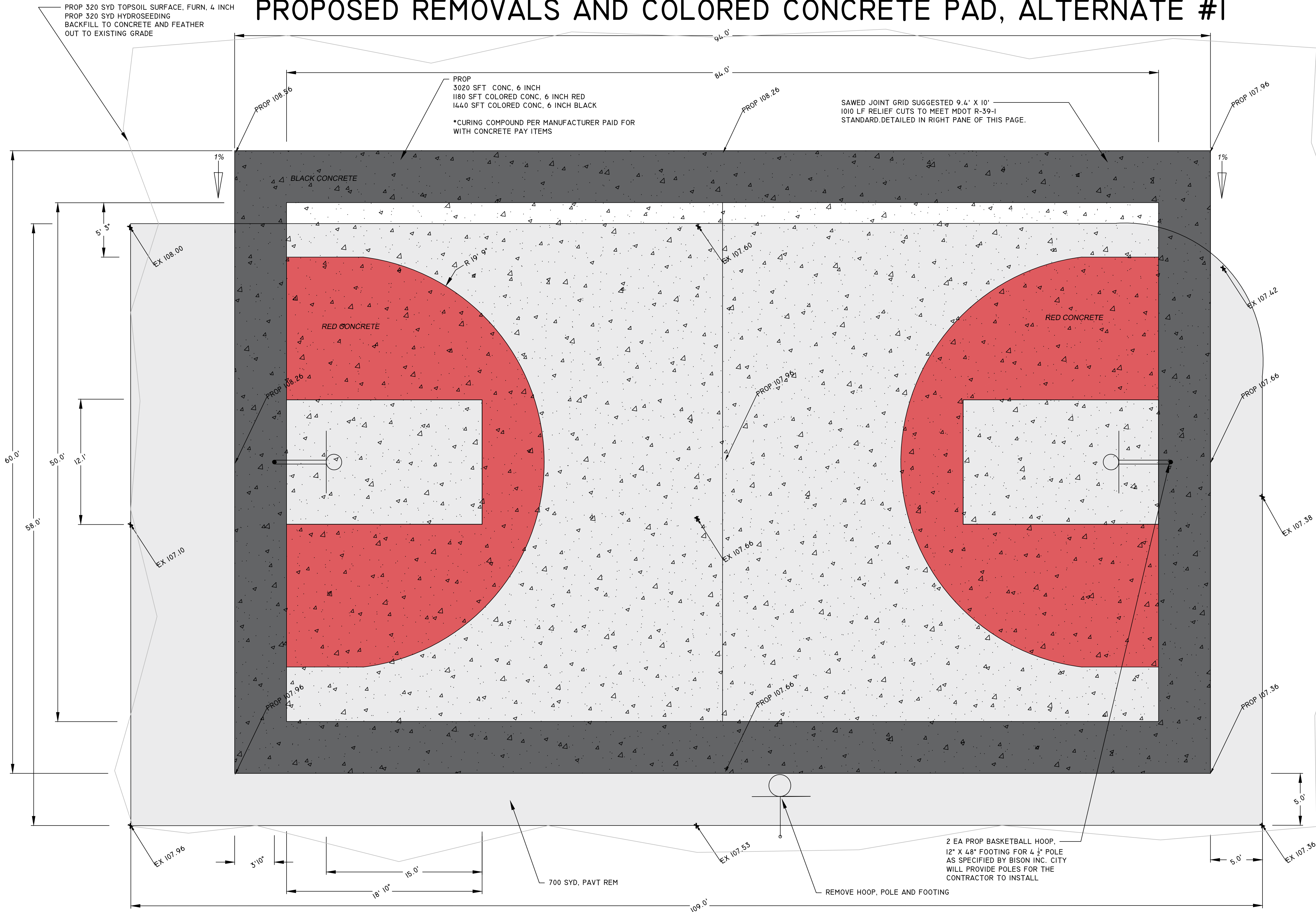
2 EA PROP BASKETBALL HOOP,
12" X 48" FOOTING FOR 4 1/2" POLE
AS SPECIFIED BY BISON INC. CITY
WILL PROVIDE POLES FOR THE
CONTRACTOR TO INSTALL

QUANTITIES THIS SHEET		
DESCRIPTION	QUANTITY	UNIT
PAVT REM	700	SYD
CONC. 6 INCH	5640	SFT
BA777XL GOOSENECK HEAVY-DUTY PLAYGROUND POLE	2	EA
TOPSOIL SURFACE, FURN. 4 INCH	320	SYD
HYDROSEEDING	320	SYD

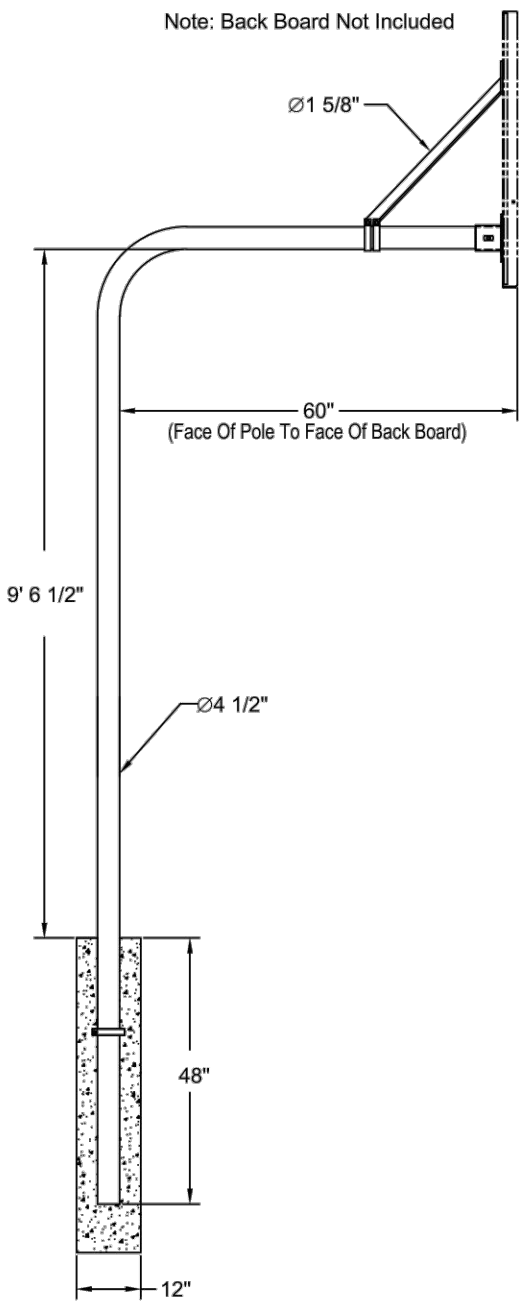
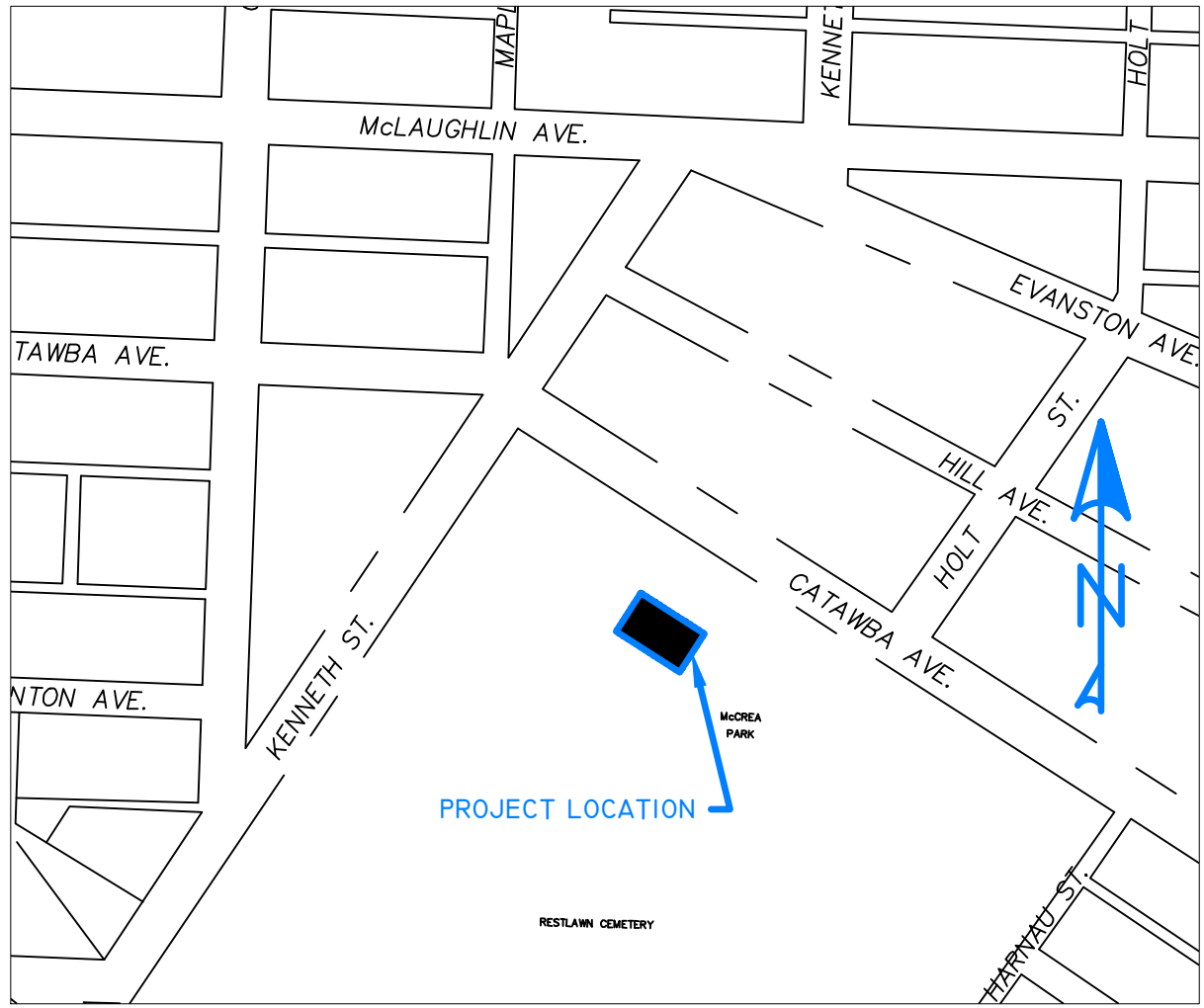
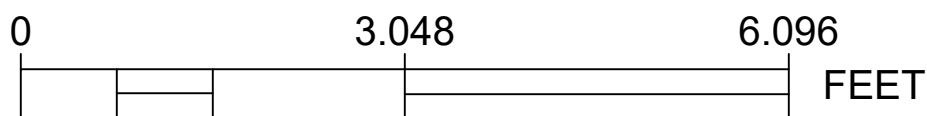
STANDARD: Saw joints in two stages, in accordance with the following:
a. Place a relief cut directly over the center of the load transfer assembly or over the joint between slabs before random cracks develop in the concrete pavement.Immediately stop sawing operations. Do not allow traffic over the expansion joint relief cuts.
b. Center the joint groove over the relief cut. Adjust the groove width to compensate for excessive raveling or spalling, and continue to monitor the concrete hardness before placing sealant or place temporary cover material. Give second stage sawing of expansion joint sealant or place temporary cover material. Give second stage sawing of expansion joint sealant or place temporary cover material.
c. If proposing an alternative method for sawing, submit a plan to the Engineer for review.



PROPOSED REMOVALS AND COLORED CONCRETE PAD, ALTERNATE #1



QUANTITIES THIS SHEET		
DESCRIPTION	QUANTITY	UNIT
PAVT REM	700	SYD
CONC. 6 INCH	3020	SFT
COLORLED CONC. 6 INCH RED	1180	SFT
COLORLED CONC. 6 INCH BLACK	1140	SFT
BA777XL GOOSENECK HEAVY-DUTY PLAYGROUND POLE	2	EA
TOPSOIL SURFACE, FURN. 4 INCH	320	SYD
HYDROSEEDING	320	SYD

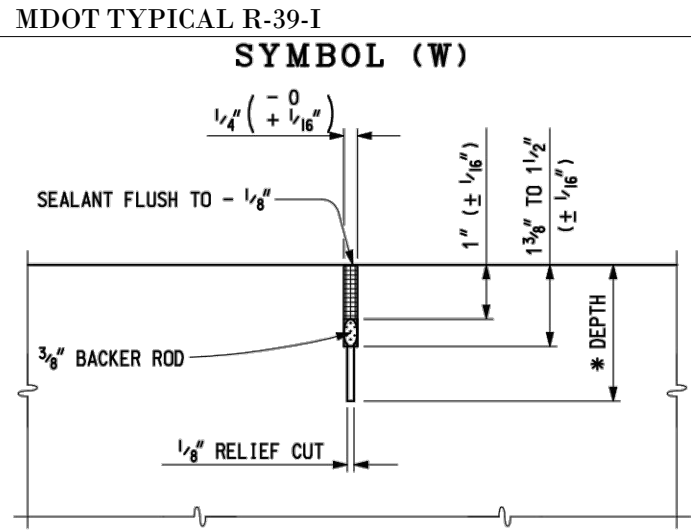


Pole shall be constructed of 4 1/2" outside diameter RS40 zinc flow coated steel tubing with a 7 ga. wall thickness. Design shall be a bent gooseneck style and allow for a 48" bury into the ground and a 60" extension from the front of the pole to the face of the backboard. Two 1 5/8" diameter, 13" zinc flow coated tubular braces shall support the top of the backboard and connect directly to the pole. Pole shall be designed so that the rim mounts directly to the horizontal pole section through the backboard to eliminate stress on the backboard during play. Pole systems without backboard support braces shall not be considered equal. Installation to be completed in accordance with manufacturer's instructions. Do not scale drawings. Poles shall carry a minimum 25-year warranty and shall weigh approximately 160lb.

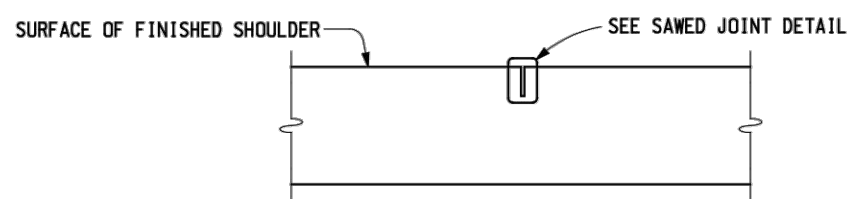


PRODUCT SPECIFICATION

603 L Street, Lincoln, NE 68508 - Phone: (800) 247-7668 - Fax: (800) 638-0698 - www.bisoninc.com - info@bisoninc.com



SAWED JOINT SEALING COMPOUND.

* DEPTH OF RELIEF CUT FOR JOINT $\frac{1}{4}$ THE SLAB THICKNESS

TRANSVERSE AND INTERSECTION PLANE OF WEAKNESS JOINTS

STANDARD: Saw joints in two stages, in accordance with the following:

- a. Place a relief cut directly over the center of the load transfer assembly or over the preformed joint filler. Make the relief cut after the concrete hardens and will not excessively ravel or spall, but before random cracks develop in the concrete pavement. Immediately stop sawing if sawing operation causes excessive raveling or spalling, and continue to monitor the concrete hardness before resuming sawing.
- b. operations. Do not allow traffic over the expansion joint relief cuts.
- c. Center the joint groove over the relief cut. Adjust the groove width to compensate for change in the relief cut due to pavement contraction. Immediately stop sawing if sawing operation causes excessive raveling or spalling, and continue to monitor the concrete hardness before resuming sawing operations. Maintain the curing of the concrete near the joint, and if required, install the permanent joint sealant or place temporary cover material. Give second stage sawing of expansion joints priority over second stage contraction joint sawing, if higher pavement temperatures are forecast. If proposing an alternative method for sawing, submit a plan to the Engineer for approval. The Engineer will not allow spalling, raveling, and random cracks in the concrete pavement.

NOTES:

Date:

Revisions:

Drawn: Kevin Parker

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-
-

2010

CITY OF MISKEGON

C

1.10 BID TABULATION										
City of Muskegon Engineering Department			Project Engineer:		KP		Date:		5/25/2021	
			Project Number:							
			Project description:		McCrae Basketball Court					
			Engineer's Estimate:							
					Ryerson Brothers Excavating		Accurate Excavators		Wing Contracting, LLC	
Line Item	Pay Code	Description	Units	Quantity	Unit Price	Total	Unit Price	Total	Unit Price	Total
1		Basketball Court Removal, Pavement and Hoop footings	1	LSUM	\$ 2,250.00	\$ 2,250.00	\$ 4,445.00	\$ 4,445.00	\$ 5,950.00	\$ 5,950.00
2		Concrete Pad, 6", 94' x 60' including setting 2 new poles and sawed joints	1	LSUM	\$ 26,249.00	\$ 26,249.00	\$ 32,650.00	\$ 32,650.00	\$ 52,693.00	\$ 52,693.00
3		Topsoil (approx 32 CYD)	1	LSUM	\$ 1,200.00	\$ 1,200.00	\$ 2,500.00	\$ 2,500.00	\$ 1,511.00	\$ 1,511.00
4		Hydroseeding (320 SYD)	1	LSUM	\$ 500.00	\$ 500.00	\$ 755.00	\$ 755.00	\$ 346.00	\$ 346.00
5										
6					TOTAL BASE BID	\$ 30,199.00		\$ 40,350.00		\$ 60,500.00
7										
8										
9		Alternate # 1 Replaces Line 2, Colored Concrete Pad, 6", 94' x 60' including setting 2 new poles and sawed joints	1	LSUM	\$ 39,315.00	\$ 39,315.00		\$ 43,705.00		NO BID
10					TOTAL ALTERNATE PRICE	\$ 43,265.00		\$ 51,405.00		\$ -



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: 06/08/2021	Title: Filtration Plant Communications Tower
Submitted By: Joe Buthker	Department: Public Works - Filtration
Brief Summary: Authorize staff to award the contract for the procurement of the communications tower at the Water Filtration Plant.	
The City Commission approved the purchase of the Water Filtration Plant Communication Tower at its meeting on February 9, 2021. The original quote for tower materials was \$84,618.00, and staff requested a total of \$93,079.80 (an additional 10%) to account for any fluctuations in material pricing and shipping. The project manager (Maralat Communications) recommended to not purchase the tower until all regulatory requirements were completed. Unfortunately, this process took longer than anticipated. The process is now complete, and staff is ready to purchase the tower. Staff received an updated quote from Valmont Industries for \$94,050.00. Since this is \$970.20 more than approved in February, staff is requesting the approval of the purchase of the communications tower for the updated amount.	
Amount Requested: \$94,050.00	Amount Budgeted: \$300,000.00
Fund(s) or Account(s): 591-92034-5346	Fund(s) or Account(s): 591-92034-5346
Recommended Motion: Authorize staff to approve the contract with Valmont Industries for the procurement of the communications tower in the amount of \$94,050.00.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	



Quotation

Quote Number : 433083-08

Created : 6/1/2021 7:56:18 AM

Revised :

Valmont Industries, Inc.
28800 Ida Street

Valley, NE 68064

Prepared for : City of Muskegon

Attention :

Budgetary : No

RFQ :

Address1 :

Address2 :

City :

State :

Zip :

Phone :

Email :

Project : City of Muskegon- Water Filtration Plant - Muskegon, MI -
195' Monopole (stamped design)

NOTICE

Quoted prices will be held firm for 15 days. Prices are subject to change if product is not shipped within 2 months of Purchase Order receipt.

Item	Description	Qty	Unit Price
1	195' MONOPOLE - 194' POLE WITH 1' ESTIMATED FOUNDATION PROJECTION Price Includes: - Steel templates and anchor bolts. - Pole sections and accessories to be hot dipped galvanized. - Transmission line entry ports at the base of the pole. - Transmission line exit ports at each specified antenna level. - Pole assembly hardware. - Removable climbing steps with galvanized Tuf-Tug cable type safety climb system (less harness). - Includes TIA-G standard grounding provisions welded to pole. - Includes 4'-7' adjustable lightning rod	1	\$85,558
		1	\$85,558

NOTES

DELIVERY

Estimated lead time is 8 to 10 weeks. Please note that lead times are estimated and can fluctuate due to production capacity. Please contact customer service to verify current lead times or if a better delivery date is possible when placing an order. A complete soil report and plot plan (for guyed towers) must be received by Valmont prior to manufacturing.

FINISH SYSTEM

Galvanized (GV) Base Coat: Hot-Dip Galvanized to ASTM A123 Spec: F-1.

FREIGHT

Estimated Cost, with unloading of truck by others to Muskegon, MI, nearest access point to the site, via flat bed tractor trailer. Any special handling by other. (3 truck(s) required) \$7,992.00

Estimated anchor steel freight shipped direct from our supplier. Average anchor steel lead time is 3 to 4 weeks. \$500.00

GENERAL

It is the customers responsibility to inform Valmont Structures if this project is federally funded and if the "Buy America Act" or "Buy American Act" applies. Valmont reserves the right to re-quote if either of these "Acts" are applicable.



Quotation

Quote Number : 433083-08

Created : 6/1/2021 7:56:18 AM

Revised :

Valmont Industries, Inc.
28800 Ida Street

Valley, NE 68064

GENERAL	Products may be foreign built - if this is not acceptable please request a revised quote. Foundation design and formal pole calculations not included. Available upon request.
GENERAL NOTES	Please send orders to Lisa Taylor (lisa.taylor@valmont.com).
MATERIAL PRICE	Due to material price fluctuations, Valmont reserves the right to review all material pricing prior to accepting any order. Any order placed on hold is subject to a price review at the time of its release. Valmont may be required by state law to collect Sales/Use Tax at the time of shipment. If required, this tax will appear as a separate item on the invoice. If you have a tax exempt certificate, submit it at the time of order.
MONOPOLE	For pole weight, base reactions and design/antenna loads, please refer to Valmont Permit Drawing File ID 433083-P1R1. Pole sizes are preliminary only and may change slightly at time of order entry. Foundation build and tower erection are by others.

* Valmont reserves the right to apply storage charges of three-hundred and fifty dollars (\$350.00) per month for structures kept in our yard beginning the 1st of the month following the original ship date.

* Quote is subject to Valmont's standard terms and conditions. See attached copy.

* All quotations subject to acceptance by Valmont at time of order placement.

* F.O.B Valmont Factory

* Terms: NET 30 Days (upon approved credit)

* Prepared by McKynna Kelly
Project Administrator
Valmont Industries Inc.



COMMUNICATIONS STANDARD TERMS AND CONDITIONS OF SALE

AGREEMENT: This document ("Document") contains the standard terms and conditions of sale by Valmont Industries, Inc. ("Supplier"), to Purchaser, of products, materials, other goods, equipment, operations, or services ("Product"). If this Document is a quotation, then the offer contained herein shall remain open for thirty (30) days from the date it was issued, unless otherwise specified, and Purchaser shall be deemed to have accepted the offer and terms and conditions contained herein upon the earlier of: (1) Purchaser's signature and return of this Document to Supplier by fax or any other means; (2) Supplier's receipt of any order or any other writing from Purchaser indicating Purchaser's acceptance and agreement to the terms hereof; or (3) Purchaser's acceptance of any shipment of Product. Whether this Document is a quote, an invoice, or otherwise, the terms and conditions of the parties' agreement shall consist solely of the terms and conditions contained in this Document, together with any separate written agreement previously executed by both Purchaser and Supplier, any invoices generated in connection herewith, and any written addenda to the foregoing that are signed by Purchaser and Supplier (all of which are hereinafter collectively referred to as the "Agreement"). Any additional or different terms contained in any order or other document submitted by Purchaser to Supplier shall be deemed rejected, unless expressly accepted in writing by Supplier. In no event shall Supplier's silence or failure to respond to any such additional or different terms be deemed to constitute acceptance or approval thereof. If this Document is a quotation, then failure of the Purchaser to reject these terms and conditions in writing upon the first to occur of the receipt of this or any other document from or on behalf of the Supplier containing these terms and conditions or the delivery of Product pursuant to the Agreement shall constitute final acceptance of the terms and conditions hereof. To the extent this invoice is in any way deemed to be an acceptance of an offer of the Purchaser, any such acceptance of the Supplier is expressly conditioned upon the consent of the Purchaser to the terms and conditions of the Agreement.

MODIFICATIONS, RESCISSION & CANCELLATION: The Agreement may be modified or rescinded only in writing signed by duly authorized representatives of the parties. For any changes requested by Purchaser to the specification, style, or quantity of the Product, Purchaser shall pay the Supplier a charge equal to the actual additional cost incurred by the Supplier as a result of such change plus a reasonable percentage of such actual cost for overhead and profit. Orders may be canceled only with Supplier's written consent and upon terms which will save Supplier from loss, including all out-of-pocket costs and lost profits.

LIMITED WARRANTY: Supplier warrants the Product to be free of material and workmanship defects for a period of two years from the date of shipment, but said warranty is limited to material and workmanship of Product designed and manufactured by the Supplier. For any product manufactured using items supplied by Purchaser or Purchaser's designee, Supplier makes no warranty concerning the design, fabrication, or manufacture of the items supplied. Such items shall carry only the respective designer's, fabricator's, or manufacturer's warranty, if any. For product manufactured or fabricated by Supplier according to specifications or designs provided by Purchaser or Purchaser's designee, Supplier makes no warranty concerning the adequacy or sufficiency of the specifications or designs themselves. All warranty claims alleging defects of materials or workmanship must be submitted in writing within seven (7) days after the discovery of the defect or such claim shall be considered waived. Supplier will not accept Product returned to it for repair or replacement, unless Supplier is previously notified of the defect in writing and the return or correction is authorized by Supplier in writing. Any Product deemed by Supplier, in its sole discretion, to be defective in material or workmanship will be repaired or replaced, at Supplier's option, F.O.B. Supplier's plant. Supplier's obligation to repair or replace any defective Product shall not include any obligation to reimburse the Purchaser for transportation, installation, removal, unauthorized repairs, or any other expenses that may be incurred by the Purchaser or others in relation to any Product defect. **THIS WARRANTY EXCLUDES (I) FATIGUE FAILURE OR SIMILAR PHENOMENA RESULTING FROM INDUCED VIBRATION, HARMONIC OSCILLATION OR RESONANCE ASSOCIATED WITH MOVEMENT OF AIR CURRENTS AROUND THE PRODUCT. FURTHER, LABOR REQUIRED TO REMOVE AND/OR REINSTALL ORIGINAL OR REPLACEMENT PARTS SHALL BE THE RESPONSIBILITY OF THE CUSTOMER; (II) DAMAGE CAUSED BY IMPROPER INSTALLATION, OVERLOADING, MISUSE, ABUSE, ACCIDENT OR NEGLIGENCE.** In addition, this warranty does not cover alterations, modifications, or additions unless the change is acknowledged and accepted, in advance in writing, by Valmont; and (iii) if the products are to be used on an existing foundation or on other structures, the customer assumes all responsibility for the structural integrity of the existing foundation, anchorage or structures and all the consequences arising therefrom.

THE FOREGOING WARRANTIES ARE THE ONLY WARRANTIES GIVEN BY SUPPLIER, AND SUPPLIER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING FROM STATUTE, COMMON LAW, CUSTOM, COURSE OF DEALING, USAGE OF TRADE, OR OTHERWISE. THE REMEDY OF REPAIR OR REPLACEMENT OF THE DEFECTIVE PRODUCT SET FORTH IN THE FOREGOING WARRANTIES SHALL BE THE EXCLUSIVE REMEDY AVAILABLE TO ANY PERSON. SUPPLIER SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, EXPENSE, OR DAMAGE, WHETHER DIRECT, CONSEQUENTIAL, INCIDENTAL, OR OTHERWISE (INCLUDING LOST PROFITS, LOSS OF CONSTRUCTION BONUS OR INCENTIVES), RESULTING FROM THE POSSESSION, INSTALLATION, ERECTION, START-UP, USE, MAINTENANCE, OPERATION, REMOVAL, OR RESALE OF SUPPLIER'S PRODUCT OR CAUSED BY ANY DEFECT, FAILURE, OR MALFUNCTION OF ANY PRODUCT, WHETHER A CLAIM FOR SUCH DAMAGES IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, OR OTHERWISE. NO PERSON HAS THE AUTHORITY TO BIND THE SUPPLIER TO ANY REPRESENTATION OR WARRANTY OTHER THAN THE FOREGOING LIMITED WARRANTIES AS DISCLAIMED.

DELIVERY, FREIGHT & RISK OF LOSS: All products are sold F.O.B. factory, full freight allowed within the continental United States, consisting of the lower 48 contiguous states, unless otherwise specified in writing. For shipment destinations outside the continental U.S., freight charges will be prepaid to the nearest port of exit with all other applicable charges from said point of delivery being the responsibility of the customer, unless otherwise noted. The method of shipment will be solely determined by Valmont, using a common carrier of Valmont's choice and delivered to the nearest destination. The customer assumes and will pay all charges for special services such as cartage, airfreight, express deliveries, parcel post and multiple deliveries on one order. For orders less than \$1,500, freight may not be included and may be prepaid and charged to the customer. Orders below \$500 may incur a processing fee. Freight charges for anchor bolts or accessories shipped independent of the structures (at the customer's request) may be billed separately and paid by the customer, unless otherwise specified in writing. Risk of Loss, including transportation delays and losses, shall pass to Purchaser upon the earlier of (i) completion of the Product's manufacture, if shipment is delayed by Purchaser, (ii) delivery of the Product to the Purchaser in cases where shipment is F.O.B. destination, or (iii) delivery of the Product to the carrier in cases where shipment is collect or is F.O.B. point of shipment.

PRICING: All prices and discounts are subject to change without advance notice except those shown on a specific quotation indicating the prices to be firm for thirty (30) days from the date of the quotation. For quotations accepted by Purchaser, Purchaser agrees that if the contract documents or designs or the prices of raw materials change from that contained in the quotation, Supplier has a right to charge additional compensation for increased costs, including, without limitation, costs related to freight and raw materials, as well as for increased margin associated therewith. Orders delayed or put on customer hold may not be price protected beyond the date of a general price increase announcement.

RETURNS & CLAIMS FOR SHORTAGES: Supplier will not accept returns for custom-made Product for any reason, provided that Supplier will accept returns made solely for repair or replacement under the foregoing express warranties, but only if Supplier has previously authorized said returns in writing. Standard (non-custom) Product may not be returned without the written consent of Supplier obtained within thirty (30) days after shipment, and only upon the following conditions: (i) all returned Product must be in excellent and merchantable condition and in the original packaging; (ii) the outbound and return freight must be pre-paid; and (iv) the return is subject to certain charges depending on current pricing and product. All claims for shortages must be made in writing within 30 days of receipt of shipment at destination.

PRODUCT SHIPPED WITH PROTECTIVE COVERING: Product received at the point of destination with protective covering should be unwrapped immediately and inspected. Any exposure to moisture during transportation or storage may cause the wrapping materials to stain the Product. Product is wrapped for protection during shipment.

INSTALLATION: Purchaser shall be solely responsible at its cost for the installation and erection of the Product purchased. Although Supplier may, in some cases, provide data, manuals, instructions, designs, drawings or specifications to aid Purchaser with installation or start-up, **SUPPLIER ASSUMES NO RESPONSIBILITY FOR PROPER INSTALLATION OR SUPPORT OF THE PRODUCT WHEN ERECTED AND DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO SUCH INSTALLATION OR SUPPORT, WHETHER OR NOT DATA, MANUALS, INSTRUCTIONS, DESIGNS, DRAWINGS OR SPECIFICATIONS ARE PROVIDED.**

DELAYS: Supplier will deliver or ship with reasonable promptness, but shall not be liable for delays for any reason beyond the Supplier's reasonable control, including, but not limited to, delays caused by acts of God, war, riot, embargoes, acts of civil or military authorities, fires, floods, accidents, quarantine restrictions, mill conditions, strikes, differences with workmen, delays in transportation, shortages of cars, fuel, labor or materials. **IN ANY SUCH EVENT, SUPPLIER SHALL HAVE SUCH ADDITIONAL TIME WITHIN WHICH TO PERFORM AS MAY BE REASONABLE AND NECESSARY UNDER THE CIRCUMSTANCES, AND SUPPLIER SHALL NOT BE LIABLE TO PURCHASER FOR ANY DAMAGES ARISING FROM SUCH DELAYS, LOSS OF USE OR FOR OTHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LABOR RESULTING FROM FAILURE OR DELAY IN DELIVERY.**



CREDIT APPROVAL & SECURITY FOR PAYMENT: Acceptance of any offer of Supplier is subject to Supplier's approval of Purchaser's credit, and Supplier may at any time decline to make any shipment or delivery, or to perform any services, except upon receipt of payment or security, or upon such other terms as may be satisfactory to Supplier. To secure the payment of any and all amounts due Supplier under this Agreement or any other contract between the parties, Supplier retains and the Purchaser grants to Supplier a security interest in the Product purchased hereunder and agrees to execute and deliver to Supplier such financing statements or to take any other action necessary to perfect Supplier's security interest as Supplier may reasonably request.

TERMS, INVOICES, PAYMENT, LATE CHARGE & TAXES: Payment terms are NET thirty (30) days from the date of Supplier's invoice, unless otherwise specified and approved in advance in writing from the Valmont Credit Department. Invoices will be rendered upon delivery of each order to Purchaser. All payments shall be made to the "remit to" location as stated on the Supplier's invoice. Supplier reserves the right to invoice, and Purchaser agrees to pay for, any or all Product ready for shipment, together with expenses, costs, and losses associated therewith, whenever shipment is delayed pursuant to Purchaser's written instructions or for other reasons beyond Supplier's control. Invoices for anchor bolts shipped in advance of the structures may be billed at the time of such anchor bolt shipment. A monthly late charge of 1.5% of the invoice amount or \$50, whichever is greater, will be assessed on all past-due amounts. Any tax or other charge imposed by law on the sale of goods or the performance of services shall be paid by the Purchaser, unless the law specifically provides that such payment must be absorbed by Supplier. Purchaser shall inform the Supplier, in advance in writing, of such taxes or other charges imposed by state, municipal, or other law that are to be paid by the Supplier.

DEFAULT OF PURCHASER: In the event that (i) Purchaser fails to pay any invoice when due; (ii) Purchaser breaches this Agreement or any other contract with Supplier or any of its affiliated companies; or (iii) Purchaser's financial strength becomes unsatisfactory, Purchaser shall thereby be in default, and Supplier reserves the right, in its sole discretion, to do any one or more of the following: (i) cancel this Agreement and any work in progress, shipments, and pending orders without further notice; (ii) declare all sums owing from Purchaser to Supplier to be due and payable; (iii) require payment in advance of performance, in certified funds; (iv) foreclose any security interest; (v) require other security satisfactory to Supplier. Purchaser shall be liable to Supplier for any and all damages, whether direct, indirect, consequential, special or any other kind of damages, caused by or arising out of any breach of this agreement, provided that the exercise of any rights under this contract shall not bar Supplier from exercising its rights under the UCC or any other applicable law. The Purchaser waives any applicable statutory exemptions and shall pay all expenses incurred by Supplier in the collection of the amounts due under the Agreement, including attorneys' fees.

INDEMNIFICATION & GOVERNING LAW: Purchaser shall indemnify and hold Supplier harmless from all expenses (including attorneys' fees), claims, demands, suits, judgments, actions, costs, and liabilities (including without limitation those alleging Supplier's own negligence) which may arise from, relate to, or be connected with the Purchaser's possession, installation, erection, start-up, use, maintenance, operation, removal, or resale of the Product described herein and any manuals, instructions, designs, drawings or specifications related thereto. All disputes relating to the execution, interpretation, construction or enforcement of the rights and obligations of the parties hereto shall be governed by the laws of, and resolved in the State and Federal courts in the State of Nebraska, and the parties hereby consent to venue in Omaha, Nebraska. **THE PURCHASER AND SUPPLIER EACH HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY ON ANY CLAIM (INCLUDING COUNTERCLAIMS) ARISING WITH RESPECT TO THE GOODS PURCHASED HEREUNDER.** Any lawsuit based on or related in any way to the Agreement or the Product described therein must be commenced within two (2) years after delivery of the Product or other goods to the Purchaser or it shall be barred.

WATCH MUSKEGON

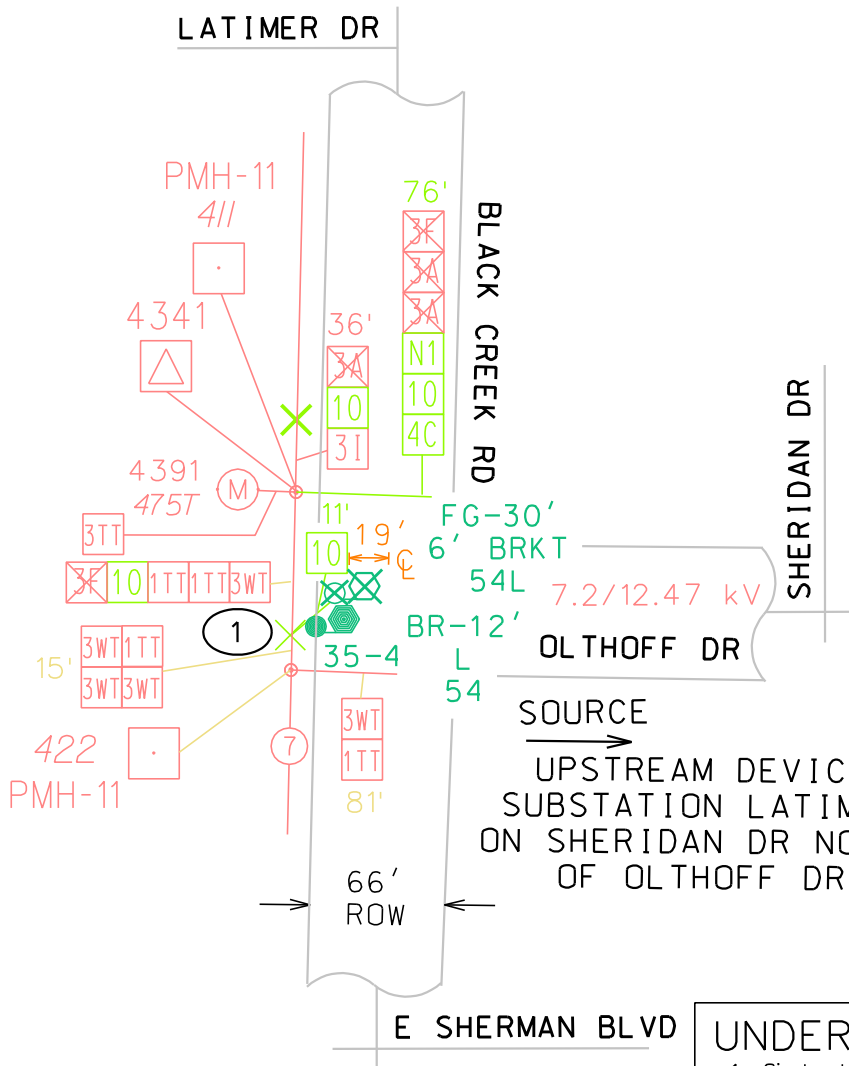
Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8 th , 2021	Title: Musketawa Trail Streetlight Relocations
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is seeking authorization to relocate seven (7) streetlights within the Port City Industrial Park to facilitate construction of the Musketawa Trail Connector project.	
Detailed Summary: Final design and alignment of the Musketawa Trail Connector project required relocation of several streetlights along Black Creek Drive, Latimer Drive and Port City Boulevard within the Industrial Park. The work is done by Consumers Energy through contract, however the cost of the relocations is the cities responsibility. Funding for this request is included in the proposed budget for project number 202-99118-5346 within the 21/22 fiscal year.	
Amount Requested: \$35,048.00	Amount Budgeted: \$650,000
Fund(s) or Account(s): 202-99118	Fund(s) or Account(s): 202-99118
Recommended Motion: Authorize staff to contract with Consumers Energy in the amount of \$35,048 for the relocation of the streetlights along Black Creek Drive, Latimer Drive and Port City Boulevard as necessary for the construction of the Musketawa Trail Connector.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	



~~N~~

INSTALL NEW STREETLIGHT
POLE 8' TO THE WEST OF
EXISTING FG POLE



1. Single-phase primary
2. Open wye primary
3. Three-phase primary
4. Single-phase secondary
5. Combination light and power secondary
6. Three-phase power secondary
7. Single-phase service
8. Combination lighting and power service
9. Three-phase power service
10. Streetlighting conductor (2/C-#10 CU)
11. Streetlighting conductor (2/C-#8 AL)
12. Covered neutral conductor for ducts
13. Streetlighting conductor (3/C-#1/0 AL)

S2 2"Steel **S3** 3"Steel **S4** 4"Steel **S5** 5"Steel **S6** 6"Steel

- A. No 2 AL cable,175 mils,15KV, or secondary.
- B. No 1/0 AL cable,175 mils,15KV, or secondary.
- C. No 3/0 AL cable,175 mils, 15KV, or secondary.
- D. 350 kcmil AL cable,175 mils,15KV, or secondary.
- E. 500 kcmil copper cable,175 mils, 15KV, or secondary.
- F. 750 kcmil AL cable,175 mils, 15KV, or secondary.
- G. No 1/0 stranded AL cable, 280 mils, 28KV.
- H. No 3/0 stranded AL cable, 280 mils, 28KV.
- I. 750 kcmil AL cable, 280 mils, 28KV.
- J. Cable joint.
- K. 350 kcmil AL cable, 260 mils, 25KV.
- M. Marker to locate cable
- N. Refer to Note on Drawing, N1 for Note 1, etc.
- R. No 1/0 AL, solid, 280 mils, 28KV.
- T. No 1/0 AL stranded, 280 mils, 28KV, jacketed
- TT. No 1/0 AL stranded cable, 260 mils tree-retardant INS,25KV,Jacketed.
- V. 350 kcmil AL stranded, 260 mils, 25KV, jacketed.
- VT. 350 kcmil AL cable, 260 mils tree-retardant INS, 25KV, Jacketed.
- W. 750 kcmil AL stranded, 280 mils, 28KV, jacketed.
- WT. 750 kcmil AL cable, 260 mils tree-retardant INS, 25KV, Jacketed.

EX:

3R

 - No. 1/0 solid AL cable for three-phase primary

3G4D

 - No. 1/0 AL cable for 3-phase primary
and 350 AL cable for 1-phase secondary

~~CONDUCTOR CHANGE~~

RELOCATE STREETLIGHTS DUE
TO A BIKE PATH BEING INSTALLED

CONSUMERS ENERGY CONTACTS				ORDER TYPE	MAT. TYPE	NOTIFICATION NUMBER	DESIGN NUMBER	ORDER NUMBER
DEPARTMENT	NAME	NUMBER	ALTERNATE	ECNC	RLU	1051700349	11259963	
				ECND	RLD	10575533842	11264958	
				ECNC	NLU	1057301742	11259964	
DESIGNER	BROOKLYN TOBIAS	269-589-7033		ORDER NUMBER				
PROJECT COORD.	JOEL BROWN	231-557-8762						

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STAKED	☒ YES	☐ NO
TREES	☐ YES	☒ NO
TLM NUMBER	# OF RODS	OHMS
10163443		

Consumers Energy

A CMS Energy Company ELECTRIC

DESIGNED BY	DATE
BTORIAS	05/26/21

APPROVED BY	DATE
-------------	------

SHEET 01 OF 03	SCALE	NONE
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THDPY20 BLACK CREEK RD RL STLT RLU

For: CITY OF MUSKEGON

2265 BLACK CREEK RD

SUBSIDIARY
PLANT

IN CIRCUIT
MISKETAWA

CM NO. 100006312274

ORDER TYPE	MAINTENANCE ACTIVITY TYPE	DESIGN NUMBER
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ECNC	RLU	11259963
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DESIGN FILE NAME: 11259963.001

T	R	S	10	16	34
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MISS DIG System, Inc.
1-800-482-7171



JOB PURPOSE

RELOCATE STREETLIGHTS DUE
TO A BIKE PATH BEING INSTALLED

UNDERGROUND LEGEND

1. Single-phase primary
2. Open wye primary
3. Three-phase primary
4. Single-phase secondary
5. Combination light and power secondary
6. Three-phase power secondary
7. Single-phase service
8. Combination lighting and power service
9. Three-phase power service
10. Streetlighting conductor (2/C-#10 CU)
11. Streetlighting conductor (2/C-#8 AL)
12. Covered neutral conductor for ducts
13. Streetlighting conductor (3/C-#1/0 AL)

CONDUIT

[P2] 2" Plastic [P3] 3" Plastic [P4] 4" Plastic [P6] 6" Plastic

[S2] 2" Steel [S3] 3" Steel [S4] 4" Steel [S5] 5" Steel [S6] 6" Steel

CABLE MATERIAL AND SIZE

- A. No 2 AL cable, 175 mils, 15KV, or secondary.
- B. No 1/0 AL cable, 175 mils, 15KV, or secondary.
- C. No 3/0 AL cable, 175 mils, 15KV, or secondary.
- D. 350 kcmil AL cable, 175 mils, 15KV, or secondary.
- E. 500 kcmil copper cable, 175 mils, 15KV, or secondary.
- F. 750 kcmil AL cable, 175 mils, 15KV, or secondary.
- G. No 1/0 stranded AL cable, 280 mils, 28KV.
- H. No 3/0 stranded AL cable, 280 mils, 28KV.
- I. 750 kcmil AL cable, 280 mils, 28KV.
- J. Cable joint.
- K. 350 kcmil AL cable, 260 mils, 25KV.
- L. Marker to locate cable
- M. Refer to Note on Drawing, N1 for Note 1, etc.
- N. No 1/0 AL, solid, 280 mils, 28KV.
- O. No 1/0 AL stranded, 280 mils, 28KV, jacketed
- P. No 1/0 AL stranded, 280 mils, 28KV, jacketed, 25KV, jacketed.
- Q. 350 kcmil AL stranded, 260 mils, 25KV, jacketed.
- R. 350 kcmil AL cable, 260 mils tree-retardant INS, 25KV, jacketed.
- S. 750 kcmil AL stranded, 280 mils, 28KV, jacketed.
- T. 750 kcmil AL cable, 260 mils tree-retardant INS, 25KV, jacketed.

- PROF. ELEC. CONDUCTORS ONLY
PROF. ELEC. AND GAS LINES ONLY
PROF. GAS LINE ONLY
PROF. ELEC., GAS AND TELECOMMUNICATIONS
EXIST. ELEC. CONDUCTORS ONLY
EXIST. GAS LINE ONLY
FUTURE ELECTRIC TRENCH

EX: [3R] - No. 1/0 solid AL cable for three-phase primary

[3G4D] - No. 1/0 AL cable for 3-phase primary
and 350 AL cable for 1-phase secondary

CONDUCTOR CHANGE

ELECTRIC CAD TITLE BLOCK (17x22) 10-30-2008

SHEET C

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(11)

INSTALL

30' FG POLE

6' BRKT

FIGURE 42-212-2

MOUNT AT 25'

SECONDARY PEDESTAL

4 MOLE

FIGURE 64-40-1

TRANSFER

54W LED

FIGURE 42-212-2

TRANSFER FROM LOC 10

TO LOC 11

NOTES

BORE UNDER THE STREET TO
A SECONDARY PED LOCATED
BEHIND THE NEW STREETLIGHT

CONTRACTOR TO SUPPLY 4"
RED HDPE SDR11 DUCT

PLACE NEW STREETLIGHT 6'
NORTH OF ROADWAY

(8)

INSTALL

30' FG POLE

6' BRKT

FIGURE 42-212-2

MOUNT AT 25'

SECONDARY PEDESTAL

4 MOLE

FIGURE 64-40-1

TRANSFER

54W LED

FIGURE 42-212-2

TRANSFER FROM LOC 7

TO LOC 8

NOTES

BORE UNDER THE STREET TO
A SECONDARY PED LOCATED
BEHIND THE NEW STREETLIGHT

CONTRACTOR TO SUPPLY 4"
RED HDPE SDR11 DUCT

PLACE NEW STREETLIGHT 50'
TO THE EAST OF THE EXISTING
STREETLIGHT AND 6' NORTH
OF ROADWAY

(6)

INSTALL

30' FG POLE

6' BRKT

FIGURE 42-212-2

MOUNT AT 25'

SECONDARY PEDESTAL

4 MOLE

FIGURE 64-40-1

TRANSFER

54W LED

FIGURE 42-212-2

TRANSFER FROM LOC 5

TO LOC 6

NOTES

BORE UNDER THE STREET TO
A SECONDARY PED LOCATED
BEHIND THE NEW STREETLIGHT

CONTRACTOR TO SUPPLY 4"
RED HDPE SDR11 DUCT

PLACE NEW STREETLIGHT 6'
NORTH OF ROADWAY

(4)

INSTALL

30' FG POLE

6' BRKT

FIGURE 42-212-2

MOUNT AT 25'

SECONDARY PEDESTAL

4 MOLE

FIGURE 64-40-1

TRANSFER

54W LED

FIGURE 42-212-2

TRANSFER FROM LOC 3

TO LOC 4

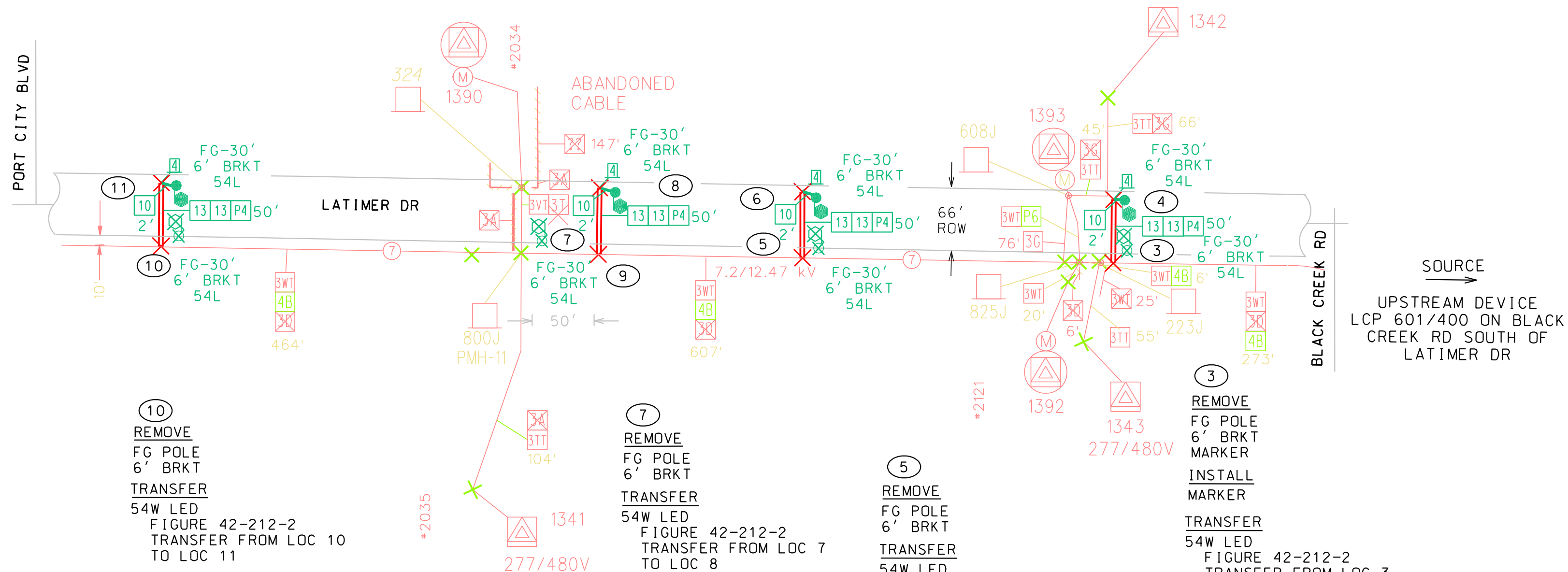
NOTES

BORE UNDER THE STREET TO
A SECONDARY PED LOCATED
BEHIND THE NEW STREETLIGHT

CONTRACTOR TO SUPPLY 4"
RED HDPE SDR11 DUCT

PLACE NEW STREETLIGHT 6'
NORTH OF ROADWAY

MUSKEGON CO
MUSKEGON TWP
T10 R16 SEC.34



CONSUMERS ENERGY CONTACTS

DEPARTMENT	NAME	NUMBER	ALTERNATE
DESIGNER	BROOKLYN TOBIAS	269-589-7033	
PROJECT COORD.	JOEL BROWN	231-557-8762	

-CONSTRUCTION CERTIFICATION-

Work was constructed as Engineered or Changed as Indicated.
All Salvageable Material Was Returned to Stores.

Signed _____ in Direct Charge of Work

Dates: Started _____ Completed _____

MISS DIG NUMBER: _____ DATE: _____

STAKED ☒ YES ☐ NO

TREES ☐ YES ☒ NO

TLM NUMBER # OF RODS OHMS

1016344201



A CMS Energy Company ELECTRIC

DESIGNED BY BTOBIAS DATE 05/26/21

APPROVED BY DATE

SHEET 02 OF 03 SCALE NONE

THDPY20 BLACK CREEK RD RL STLT RLU

For: CITY OF MUSKEGON
2265 BLACK CREEK RD

CM NO. 100006312274

SUBSTATION LATIMER

WD NO. 0454

CIRCUIT OLTHOFF

CKT NO. LCP NO. 03

ORDER TYPE ECNC

MAINTENANCE ACTIVITY TYPE RLU

DESIGN NUMBER 11259963

DESIGN FILE NAME: 11259963.001

T R S 10 16 34

MISS DIG System, Inc.

1-800-482-7171



JOB PURPOSE

RELOCATE STREETLIGHTS DUE
TO A BIKE PATH BEING INSTALLED



MUSKEGON CO
MUSKEGON TWP
T10 R16 SEC.34

UNDERGROUND LEGEND

1. Single-phase primary
2. Open wye primary
3. Three-phase primary
4. Single-phase secondary
5. Combination light and power secondary
6. Three-phase power secondary
7. Single-phase service
8. Combination lighting and power service
9. Three-phase power service
10. Streetlighting conductor (2/C-#10 CU)
11. Streetlighting conductor (2/C-#8 AL)
12. Covered neutral conductor for ducts
13. Streetlighting conductor (3/C-#1/0 AL)

CONDUIT

[P2] 2" Plastic [P3] 3" Plastic [P4] 4" Plastic [P6] 6" Plastic

[S2] 2" Steel [S3] 3" Steel [S4] 4" Steel [S5] 5" Steel [S6] 6" Steel

CABLE MATERIAL AND SIZE

- A. No 2 AL cable, 175 mils, 15KV, or secondary.
- B. No 1/0 AL cable, 175 mils, 15KV, or secondary.
- C. No 3/0 AL cable, 175 mils, 15KV, or secondary.
- D. 350 kcmil AL cable, 175 mils, 15KV, or secondary.
- E. 500 kcmil copper cable, 175 mils, 15KV, or secondary.
- F. 750 kcmil AL cable, 175 mils, 15KV, or secondary.
- G. No 1/0 stranded AL cable, 280 mils, 28KV.
- H. No 3/0 stranded AL cable, 280 mils, 28KV.
- I. 750 kcmil AL cable, 280 mils, 28KV.
- J. Cable joint.
- K. 350 kcmil AL cable, 260 mils, 25KV.
- M. Marker to locate cable
- N. Refer to Note on Drawing, N1 for Note 1, etc.
- R. No 1/0 AL, solid, 280 mils, 28KV.
- T. No 1/0 AL stranded, 280 mils, 28KV, jacketed
- TT. No 1/0 AL stranded cable, 260 mils tree-retardant INS, 25KV, Jacketed.
- V. 350 kcmil AL stranded, 260 mils, 25KV, jacketed.
- VT. 350 kcmil AL cable, 260 mils tree-retardant INS, 25KV, Jacketed.
- W. 750 kcmil AL stranded, 280 mils, 28KV, jacketed.
- WT. 750 kcmil AL cable, 260 mils tree-retardant INS, 25KV, Jacketed.

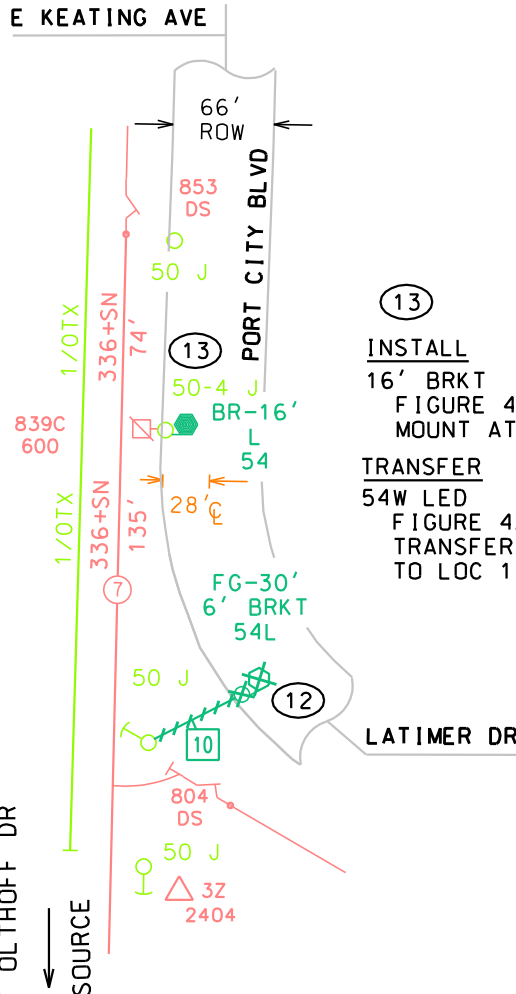
- PROF. ELEC. CONDUCTORS ONLY
PROF. ELEC. AND GAS LINES ONLY
PROF. GAS LINE ONLY
PROF. ELEC., GAS AND TELECOMMUNICATIONS
EXIST. ELEC. CONDUCTORS ONLY
EXIST. GAS LINE ONLY
FUTURE ELECTRIC TRENCH

EX: [3R] - No. 1/0 solid AL cable for three-phase primary

[3G/4D] - No. 1/0 AL cable for 3-phase primary
and 350 AL cable for 1-phase secondary

CONDUCTOR CHANGE

UPSTREAM DEVICE
SUBSTATION LATIMER
ON SHERIDAN DR NORTH
OF OLTHOFF DR



(13)

INSTALL

16' BRKT

FIGURE 42-103-1 DETAIL B
MOUNT AT 25'

TRANSFER

54W LED

FIGURE 42-212-2
TRANSFER FROM LOC 12
TO LOC 13

(12)

REMOVE
FG POLE
6' BRKT

CONSUMERS ENERGY CONTACTS

DEPARTMENT	NAME	NUMBER	ALTERNATE
DESIGNER	BROOKLYN TOBIAS	269-589-7033	
PROJECT COORD.	JOEL BROWN	231-557-8762	

ORDER TYPE	MAT. TYPE	NOTIFICATION NUMBER	DESIGN NUMBER	ORDER NUMBER
ECNC	RLU	1051700349	11259963	
ECNO	RLO	1057533842	11264958	
ECNC	NLU	1057301742	11259964	

ORDER NUMBER

Consumers Energy

A CMS Energy Company

ELECTRIC

DESIGNED BY
BTOBIAS

DATE
05/26/21

THDPY20 BLACK CREEK RD RL STLT RLU

APPROVED BY

DATE

For: CITY OF MUSKEGON
2265 BLACK CREEK RD

SHEET 03 OF 03

SCALE
NONE

-CONSTRUCTION CERTIFICATION-

Work was constructed as Engineered or Changed as Indicated.
All Salvageable Material Was Returned to Stores.

Signed _____ in Direct Charge of Work

Dates: Started _____ Completed _____

MISS DIG NUMBER: _____ DATE: _____

TLM NUMBER

10163443

OF
RODS

OHMS

CONSTRUCTION MEASURE NUMBER

100006312274

ORDER TYPE

MAINTENANCE
ACTIVITY TYPE

DESIGN NUMBER

SUBSTATION

WD NO.

ECNC

RLU

11259963

LATIMER

0454

CIRCUIT

CKT NO.

LCP NO.

STAKED

YES

NO

PORT CITY

04

TREES

YES

NO

ELECTRIC CAD TITLE BLOCK (8-1/2x11) 10-30-2008
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DESIGN FILE NAME: 11259963.001

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WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8, 2021	Title: Transmittal of 2021-22 Proposed Budget
Submitted By: Ken Grant, Finance Director	Department: Finance
Brief Summary: At this time staff is transmitting to the City Commission the proposed budget for fiscal year 2021-22 which starts July 1, 2021. Electronic versions of the budget have been distributed to Commissioners. Additionally, the budget is available for inspection on the City's website and at the City Clerk's office. An overview of the proposed budget was reviewed at the May 25, 2021 regular Commission meeting and Commissioners were encouraged to send their questions to the finance department in the weeks between then and now. The June 7, 2021 work session presented an opportunity for further discussion and inquiry. A public hearing on the budget is being held at the regular Commission meeting on June 8, 2021. City ordinance requires that the budget be adopted by the Commission on or before the second Commission meeting in June. Recommended-FY2021-22-Budget-Mtg-5-25-21.pdf (muskegon-mi.gov)	
Detailed Summary: N/A	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Approval of the proposed budget for fiscal year 2021-22.	
For City Clerk Use Only: Commission Action:	

**CITY OF MUSKEGON
RESOLUTION OF APPROPRIATION
2021-22 BUDGET**

WHEREAS, the City Manager has submitted a proposed Budget for 2021-22 in accordance with City Ordinance and Michigan Public Act 621 of 1978 known as the "Uniform Budgeting and Accounting Act"; and,

WHEREAS, the 2021-22 proposed Budget has been reviewed by the City Commission following a public hearing for which due notice was given; NOW, THEREFORE, BE IT RESOLVED that the Budget for the City of Muskegon for the fiscal year beginning July 1, 2021 is hereby determined and adopted as follows:

GENERAL FUND

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
101-10101	City Commission	\$87,223.00
101-10102	City Promotions & Public Relations	\$76,200.00
101-10145	City Attorney	\$380,000.00
101-10172	City Manager	\$529,550.00
101-10875	Support to Outside Agencies	\$405,329.00
101-10891	Contingency and Bad Debt Expense	\$50,000.00
101-20215	City Clerk & Elections	\$688,230.00
101-20220	Employee Relations	\$241,545.00
101-30202	Finance Administration	\$643,850.00
101-30203	Pension Administration	\$2,908,506.00
101-30205	Income Tax Administration	\$414,753.00
101-30209	Assessing Services	\$355,908.00
101-30248	Information Systems Administration	\$550,571.00
101-30253	City Treasurer	\$647,227.00
101-30851	Insurance Premiums	\$389,881.00
101-30906	Debt Retirement	\$1,082,000.00
101-30999	Transfers to Other Funds	\$1,115,000.00
101-40301	Police	\$10,234,869.00
101-50336	Fire	\$3,089,026.00
101-50338	Central Fire Station	\$75,000.00
101-50387	Building Code Inspections and Enforcement	\$2,007,745.00
101-60265	City Hall Maintenance	\$325,711.00
101-60446	Community Event Support/Downtown BID	\$92,100.00
101-60448	Streetlighting	\$350,000.00
101-60523	Sanitation	\$2,037,262.00
101-60550	Stormwater Management	\$14,000.00
101-70276	Cemeteries Maintenance	\$473,402.00
101-70585	Parking Operations	\$45,600.00
101-70628	Social District	\$36,750.00

101-70751	Parks Maintenance	\$1,899,516.00
101-70757	McGraft Park Maintenance	\$123,075.00
101-70771	Forestry	\$80,000.00
101-80400	Planning, Zoning and Economic Development	\$556,100.00
101-90000	Major Capital Improvements	<u>\$1,829,588.00</u>
	Grand Total General Fund Appropriations	\$33,835,517.00

OTHER BUDGETED FUNDS

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
202,204	Major Streets and State Trunklines	5,892,486
203	Local Streets	1,906,959
264	Criminal Forfeitures	12,000

BE IT FURTHER RESOLVED that the revenues and other financing sources (including use of prior year balances) for Fiscal Year 2021-22 are estimated as follows:

GENERAL FUND

<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
Taxes	\$ 17,348,776
Licenses and Permits	2,284,000
Federal Grants	333,344
State Grants	924,000
State Shared Revenue	4,399,008
Charges for Sales & Services	5,015,525
Interest & Operating Transfers	510,700
Fines & Fees	600,944
Other Revenue	<u>2,540,275</u>
 Total General Fund Revenue	
Appropriations	<u>\$33,956,572</u>

OTHER BUDGETED FUNDS

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
202,204	Major Streets and State Trunklines	5,995,848
203	Local Streets	1,555,000
264	Criminal Forfeitures	5,020

BE IT FURTHER RESOLVED that the operating expense projections for the following non-budget funds are hereby approved:

<u>FUND ACTIVITY NUMBER</u>	<u>FUND/ACTIVITY NAME</u>	<u>AMOUNT</u>
305	TIFA Debt Service	\$50,000
394	Downtown Development Authority Debt	607,654
290	Local Finance Development Authority Debt	282,300
295	Brownfield Redevelopment Authority (Betten)	21,000
296	Brownfield Redevelopment Authority (Former Mall)	275,000
298	Brownfield Redevelopment Authority (Terrace Point)	457,701
252	Farmers Market & Kitchen 242	296,007
254	L C Walker Arena	1,848,805
404	Public Improvement Fund	275,000
482	State Grants Fund	3,545,075
590	Sewer	11,743,287
591	Water	16,750,518
594	Marina/Launch Ramp	472,200
661	Equipment	3,426,379
642	Public Service Building	1,780,912
643	Engineering Services Fund	578,196
677	General Insurance Fund	5,295,415

BE IT FURTHER RESOLVED, that there is hereby appropriated for said fiscal year the several amounts set forth above which, pursuant to the "Uniform Budget and Accounting Act", define the City of Muskegon's appropriation centers, and

BE IT FURTHER RESOLVED, that the City Manager is hereby empowered to transfer appropriations within appropriation centers, and

BE IT FURTHER RESOLVED, that there is hereby levied a general tax as herein fixed on each dollar of taxable valuation for the purposes herein outlined, said levy to be applied on all taxable

real and personal property in the City of Muskegon as set forth in the assessment roll dated May 2021:

PURPOSE

MILLAGE (MILLS)

General Operating	9.9181
Sanitation Service	2.9754
Promotion	<u>.0788</u>
Total	12.9723

At a meeting of the City Commission of the City of Muskegon, on the ____ Day of June , the foregoing resolution was moved for adoption by _____. Commissioner _____ supported the motion.

Resolution declared adopted.

Mayor

City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8 th , 2021	Title: Mercy Health Arena Roof Lease
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is seeking authorization to enter into a lease agreement with New Energy Equity to install a solar array on the roof of the Mercy Health Arena.	
Detailed Summary: This topic was previously discussed at the July 2020 work session meeting, and again at a meeting in April 27 th to recommend a property tax exemption for the site. Staff has worked with Charthouse Energy and New Energy Equity, along with separate expert legal counsel from Miller, Canfield, Paddock and Stone to prepare the necessary documents to facilitate the installation and operation of a solar array on the roof of the Mercy Health Arena. This installation as designed should recognize substantial energy savings over the life of the system. This document allows for the lease of the roof space to New Energy Equity and have been reviewed and accepted by city retained legal counsel to be in the best interest of the city.	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Approve the Rooftop System Site Lease Agreement and authorize the City Manager to sign the agreement contingent upon approval of the personal property tax exemption by the state tax commission.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Mercy Health Arena Solar Project

ROOFTOP SYSTEM SITE LEASE AGREEMENT

This ROOFTOP SYSTEM SITE LEASE AGREEMENT (this “Lease”) is made and entered into as of May 28, 2021 (the “Effective Date”) by and between **New Energy Equity LLC**, a Delaware limited liability company having an office located at 2530 Riva Road, Suite 200, Annapolis, MD 21401 (“Lessee”), and the **City of Muskegon, Michigan**, a Michigan Municipal Corporation located at 933 Terrace St, Muskegon, Michigan (“Lessor”). Each of Lessor and Lessee are sometimes referred to as a “Party” and collectively as the “Parties.” “Lessee” shall include any permitted assignees pursuant to an assignment under Section 16.1 of this Lease.

WHEREAS, Lessor is the owner of certain improved real property located in City of Muskegon known as the Mercy Health Arena (the “Premises”), and desires to grant a non-exclusive lease of the rooftop areas on said improvements, all as more particularly described on Exhibit A attached hereto (the “Project Site”), and which includes the area on which the System will be installed as depicted on Exhibit A (the “Project Area”);

WHEREAS, pursuant to the terms of this Lease and that certain Power Purchase Agreement between Lessee as Seller and Lessor as Purchaser, dated as of the date hereof, as it may subsequently be amended (“PPA”) Lessee will develop, own, and operate certain photovoltaic solar energy generation equipment (the “System”) as described in Exhibit C, and associated facilities and desires to obtain a non-exclusive lease of the Project Site, in order to install and operate the System in the Project Area.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

AGREEMENT

1. DEFINITIONS. Capitalized terms shall have the meanings assigned to them herein or in the body of the PPA.

2. LEASE.

2.1 Lease. For and in consideration of the Lease on the part of Lessee contained herein, and under and subject to the terms and conditions hereof, Lessor hereby leases to Lessee and Lessee leases from Lessor, as hereinafter set forth, a non-exclusive right to the Project Site and exclusive right to the Project Area, including all air space thereof, located in the City of Muskegon, Muskegon County, State of Michigan. Upon completion of construction of the System, Lessee shall provide a revised Exhibit A to reflect the as-built configuration of the System and Project Area. Therefore, this Agreement is an interest in and encumbrance upon the Premises which shall run with the land and shall be binding upon the Premises, and Lessor and its successors and assigns for the benefit of Lessee and its successors and assigns.

2.2 Term. The initial term of this Lease (the "Initial Term") shall commence on the Effective Date and, subject to the provisions in this Lease regarding earlier termination, shall be coterminous with and extend for the duration of the term of the PPA plus 180 days (the "Term"). This Lease shall be renewed for an additional term plus 180 days (an "Extension Term") if the term of the PPA is extended as provided in the PPA. In the event of an Extension Term, such extension period shall be upon the same terms and conditions as are provided for in this Lease for the Initial Term. As used in this Lease, the "Term" of this Lease shall collectively refer to the Initial Term and any Extension Term, as applicable. In the event Lessor exercises an option to purchase pursuant to the PPA or Lessee otherwise transfers the equipment constituting the System to Lessor under the PPA, this Lease shall terminate as of the date of the closing of such purchase or transfer. In the event the PPA is terminated or expires for any other reason, subject to the rights of Seller and any assignees of Seller as defined by and under the PPA, Lessee shall (i) surrender the Premises in accordance with Section 5.1.9 of this Lease; and (ii) remove the System in accordance with the PPA. For the avoidance of doubt, if Lessor does not exercise its purchase option under the PPA, Lessor hereby grants Lessee a license to enter and remove the System upon the expiration or termination of this Lease in accordance with the PPA.

2.3 Payment to Lessor. Lessee shall pay to Lessor as rent the one-time sum of \$1.00 (the "One-Time Payment") within fifteen (15) days after the Effective Date. Lessor acknowledges and agrees that the One-Time Payment constitutes payment in full of rent for the Term and the Extension Term, and no additional amount shall be due or owing to Lessor under this Agreement.

2.4 Permitted Uses. Lessee shall have the exclusive right to occupy and use the Project Area for solar energy conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "Operations") including, but not limited to, the construction, installation, improvement, relocation, operation, maintenance and repair of the System and removal of the System. Lessee agrees that said right shall be non-exclusive to other uses of the rooftop areas and the Premises provided that such other uses shall in no event impair or interfere with the Operations. Lessee will use the Premises in a careful, safe and proper manner and will not subject the Premises to use that would damage the Premises. Lessee shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, vibrations to emanate from the Premises in a manner that would constitute a nuisance, nor take any other action which would constitute a nuisance or which would disturb, endanger or unreasonably interfere with any other operations on the Premises. All operations and activities of any Lessee Party on the Premises shall fully comply with all applicable governmental laws, ordinances, codes, rules and requirements.

2.5 Lessee's Exercise of Rights. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; provided, however, that Lessee shall not unreasonably interfere with Lessor's use, operation, or maintenance of the Premises. The System shall be installed exclusively within the areas of the Project Area including any transmission line areas within the Project Site.

2.6 Premises Utilities. Lessor shall provide existing and available utilities to the Project Site in connection with Lessee's construction, start-up, maintenance, repair, replacement, operation and removal of the System. Lessor acknowledges and agrees that Lessee's use of the Premises includes the nonexclusive appurtenant right to the use of water lines, sewer lines, storm water lines,

power lines, and utility and telephone and communication lines provided those uses are directly related to its Operations at the Premises.

2.7 Construction Laydown Area. Lessor shall provide Lessee sufficient space on the Premises or on other property to which Lessor possesses the right to grant access, for the temporary storage and staging of tools, materials and equipment reasonably necessary during installation and any maintenance, repair, replacement or removal of the System, which shall be made available for construction and system removal, provided that Lessee shall use commercially reasonable efforts to minimize disruption to Lessor's operations, and provided further that Lessee understands and acknowledges that space is limited at the Premises. Lessor and Lessee shall coordinate and cooperate in determining the amount of space and specific portion of the Premises necessary for such purposes.

2.8 Notice. Except as may be required by an emergency, Lessee shall give Lessor reasonable written or telephonic notice before any entry onto the Premises outside of normal business hours by Lessee's employees, agents, or contractors. Notwithstanding anything to the contrary in this Agreement, Lessee shall be permitted to access the Premises (i) during normal business hours; and (ii) twenty-four (24) hours a day, seven (7) days a week for emergency purposes as reasonably determined by Lessee. In the event Lessee enters the Premises due to an emergency, Lessee shall promptly notify Lessor of its entry and the nature of the emergency. Unless otherwise agreed in advance, normal business hours shall mean Monday through Saturday, 8AM through 5PM.

3. EASEMENTS.

3.1 Access Easement and Use Rights. Lessor grants Lessee a nonexclusive easement for access and use of the Premises, on, under, over, and across the Premises, as mutually agreed upon and diagramed in Exhibit E (collectively, the "Easement Area"), for the purposes of locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on the Premises (the "Use Rights"). The Use Rights include the right of parking, access, and ingress to and egress from the System on, over, and across the Easement Area during the Term, and shall survive for a period of one hundred eighty (180) days following the termination of this Lease for the purpose of removing the System. Without limiting the foregoing grant, Lessor covenants that the Use Rights may be used to achieve all the purposes set forth in this Agreement. Throughout the Term of the Lease, as described below, Lessor hereby grants Lessee an easement through the Premises, including all elevators, stairways or other access points of egress and ingress for purposes of accessing the Premises for the purposes described herein and pursuant to the terms and conditions set forth below.

3.2 Solar Easement. Lessor hereby grants Lessee a solar easement on, over, and above the Premises for the free passage of solar radiation to the System. Lessor shall not obstruct, or allow any tenant, contractor, employee or assignee of Lessor to obstruct, the passage of direct solar radiation to the System. Trees, structures, and improvements located on the Premises as of the Effective Date shall be allowed to remain, and Lessee may not require their removal; provided that Lessee may require that any trees or other vegetation be pruned or trimmed to the point that they do not obstruct the passage of direct solar radiation across the Premises to the System to a degree greater than on the Effective Date. Neither Lessor nor any of Lessor's tenants, contractors,

employees or assignees shall place or plant any trees, structures, or improvements on the Premises after the Effective Date that may, in Lessee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Lessor has received prior written approval from Lessee. Lessee and Lessor further agree to execute and record such instruments or addenda to this Lease as may be required under applicable State or local law to evidence the solar easement granted in this Section.

4. RIGHTS OF LESSEE.

4.1 Solar Resources. Other than de minimis solar energy collection for onsite signage or lights, Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations on, the Project Area. Lessor shall not grant any rights in the Project Area purporting to permit others to conduct Operations in the Project Area in derogation of Lessee's sole and exclusive rights and privileges hereunder. Without the prior written consent of Lessee, Lessor shall not (i) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including without limitation any environmental regulation, land use ordinance, or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the System on the Premises; or (ii) grant, confirm, acknowledge, recognize, or acquiesce in any right claimed by any other Person to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee in resisting and disputing such claims.

4.2 Signage. All permanent signs located on the Premises by Lessee shall be subject to the reasonable requirements of the Lessor. Temporary Lessee signage during construction shall be permitted, subject to Lessor's prior approval as to the type, size, number, location and duration of such proposed signs, which approval shall not be unreasonably conditioned, withheld or delayed. All other signage shall be prohibited.

4.3 Enforcement of Legal Rights. Lessee shall have the right to enforce Lessor's rights under applicable laws protecting solar energy systems from obstruction. Lessor shall cooperate with any efforts by Lessee to enforce such rights. Lessee shall have the right to record the interest granted hereunder through a memorandum of lease filed in the appropriate office, and Lessor shall execute such memorandum and otherwise reasonably cooperate in its recordation.

4.4 Non-Interference. In no event during the Term will Lessor construct, build or locate, or allow others to construct, build, or locate any equipment or facilities (solar or otherwise) that would interfere with the System or otherwise engage in, or allow others to engage in activity, that might impede the System's access to the sun or decrease the output or efficiency of the System or otherwise interfere with the Operations.

5. CONSTRUCTION, COMMERCIAL OPERATIONS AND SYSTEM REMOVAL.

5.1 Construction. Lessee and its contractors are responsible for designing, constructing, operating and maintaining the System in compliance with any and all applicable permits or authorizations needed from any governmental authority or utility for construction, operations, maintenance, and decommissioning of the System. In accordance with the terms of this Lease and the PPA, Lessee shall install or cause to be installed by its contractors the System in a good and

workmanlike manner free from defects, which, upon the Commercial Operation Date, such System will have an aggregate approximate nameplate generating capacity rating as shown in Exhibit B of the PPA, as it may be amended following construction to address final system size.

5.1.1 Consent. Lessor hereby consents to the construction of the System, at Lessee's sole cost and expense, in accordance with the plans and specifications set forth on the attached Exhibit C.

5.1.2 Safety and Compliance. Lessee shall, or take reasonable measures to cause its contractors and subcontractors to, comply with Lessor's reasonable and customary safety requirements and to coordinate construction of the System with Lessor so as to reasonably minimize disruption to the Premises and to Lessor's normal operations and activities thereon. Lessee shall further take reasonable measures to cause its contractors, subcontractors, employees and representatives to comply at all times comply with all applicable federal, state and local laws, ordinances, rules, and regulations applicable to the construction, ownership, operation and or maintenances of the System.

5.1.3 Hazardous Materials. Lessee shall not use, store or release Hazardous Materials on the Premises. As used in this Agreement, "Hazardous Materials" means any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic under any applicable law, and asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) or per- and polyfluoroalkyl substances

5.1.4 Additional Requirements. Lessee and Lessor shall use commercially reasonable efforts to agree to an approved construction schedule at the time of signing this Agreement. Otherwise, Lessee shall submit to Lessor for Lessor's approval, at least fifteen (15) days prior to the proposed construction start date, a proposed construction schedule identifying the times at which Lessee desires to conduct construction activities on the Premises. If Lessor objects to the proposed construction schedule, Lessor and Lessee shall cooperate to come to an agreement upon such schedule not later than 30 days following the date proposed. If at any time during the Term of this Agreement either Party requests a change to the construction schedule, the parties shall reasonably cooperate with each other in seeking to revise the construction schedule in writing.

5.1.5 Changes, Alteration and Additions. Lessee has provided Lessor with initial drawings of the System, which may be revised by Lessee as the configuration of the System is finalized (the "Drawings"). In the event the System configuration is materially changed from the original Drawings provided, Lessor shall, within fifteen (15) business days of receipt thereof, either (i) approve such Drawings; or (ii) provide Lessee with comments to such Drawings. If Lessor does not provide approval or comments to Lessee within such fifteen (15) business day period, the Drawings shall be deemed approved by Lessor. If Lessor provides comments to such Drawings during such fifteen (15) business day period, Lessee shall, in good faith, work to finalize the Drawings reasonably addressing the Lessor's comments. Except as otherwise set forth in the Drawings, Lessee shall not make any alterations, additions, or improvements to the Premises ("Alterations") without the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed. All Alterations shall be done in a good and workmanlike manner and so as not to damage or alter the primary structure or structural qualities of the Premises, shall

be lien-free upon completion, and shall be undertaken and completed in accordance with applicable laws.

5.1.6 Acknowledgment of Lessor for Roof Mounted Systems. Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the roof of the Premises, including penetrations into the roof surface. Lessor agrees to review and approve any System load studies provided by Lessee, including those relating to the weight of the System and the integrity of the roof. Installation of the System shall be completed in a manner so as not to damage the building upon which such System is installed. If damage to a building occurs as a result of Lessee's acts or omissions, Lessee shall promptly repair such damage at its sole cost and expense. Lessee or its contractors shall, at Lessee's sole cost and expense, operate and maintain the System in good repair and condition, in accordance with all applicable laws, in such a manner so as not to unreasonably interfere with any other equipment or systems (including HVAC systems, satellite, antennae, or other transmission facility) existing as of the Effective Date on the building or their equivalent replacements after the Effective Date.

5.1.7 Notification. During Construction. Lessee shall promptly notify Lessor in writing of any actions, claims, suits, notices of violation, fines, penalties, orders, revocations, and other proceedings related to violations or alleged violations of environmental laws, including, but not limited, to permits issued thereunder, which are asserted against Lessee or any of Lessee's personnel in connection with the System or their activities on, along, adjacent to or near the Premises by any governmental authority. Lessee will keep Lessor informed on a regular basis of the progress made towards resolution of such events.

5.1.8 Commercial Operation. Lessee will notify Lessor in writing when the System has achieved Commercial Operation. This notification shall provide confirmation of the satisfaction or occurrence of all of the conditions set forth in this Section 5.1.8 (the "Conditions"). The Conditions are:

- (a) The System is capable of delivering Energy Output to the Point of Delivery as provided in Section 4.9 of the PPA;
- (b) Lessee has provided a list of the System's panels, inverters, and racking, showing the make, model and nameplate capacity of such equipment, and has indicated the nameplate capacity of the System;
- (c) Lessee or its contractors have obtained all permits, consents, licenses, approvals, and authorizations required to be obtained from any governmental authority or utility to operate the System in compliance with applicable law which are in full force and effect, and that Lessee is in compliance with the terms and conditions of this Lease in all material respects.

5.1.9 Removal Upon Termination. Upon the termination or expiration of this Lease for any reason, Lessee shall, within one hundred eighty (180) days after the date of expiration, or such further period as mutually agreed by the Parties, remove the System from the Premises, and restore the rooftop to its condition as of the Effective Date, normal wear and tear

excepted. Removal of the System shall be at the cost of Lessee (the "Demobilization Period"). Upon the expiration of the Term Lessee shall promptly upon surrender will deliver all keys and building security cards for the Premises to Lessor. Any Lessee Improvements not removed prior to the expiration or termination of this Agreement (as extended by any applicable Demobilization Period) shall be deemed abandoned and may be removed and disposed of by Lessor in such manner as Lessor shall determine, and Lessee shall pay to Lessor the reasonable cost and expense incurred by Lessor in effecting such removal and disposition and in making any required repairs to the Premises, other than repairs for normal wear and tear or conditions not caused by the System removal.

6. THE PREMISES.

6.1 Confirmation of Ownership and Suitability. Lessor is the fee title owner of the Premises. At the request of Lessee, Lessor shall obtain executed and acknowledged instruments and such other documents as Lessee or Lessee's title company may require to confirm Lessor's ownership of the Premises or to complete or evidence the full granting of the leasehold interest in the Premises as intended by this Agreement. Lessee shall be responsible for obtaining any Premises or Project Area surveys, if necessary, that are not already in Lessor's possession. Lessor shall not be responsible for any third-party costs associated with this Section 6.1. Lessor shall reasonably cooperate with Lessee and its contractors in their conduct of appropriate investigation of the rooftop at the Premises before System installation commences.

6.2 Liens.

6.2.1 Subordination. If any recorded or unrecorded lien, encumbrance, covenant, condition, reservation, restriction, easement, lease, sublease, occupancy, tenancy, mineral right, option; right of first refusal or other matter (each, an "Encumbrance") is found or claimed to exist against the Premises or any portion thereof (regardless whether such Encumbrance existed as of the date hereof or was created thereafter), and Lessee determines that such Encumbrance might delay, interfere with or impair the operation of the System in accordance with the terms of the PPA, the exercise of any of Lessor's other rights under this Lease, or the financing of any project, then Lessor shall upon Lessee's request obtain a subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably requested by Lessee) from the holder of such Encumbrance. Lessor shall fully and promptly cooperate with Lessee's efforts regarding the same, and Lessor shall be reimbursed for its reasonable costs for such cooperation.

6.2.2 Notice to Premises Lienholders and Release. Lessor shall give effective notice of Lessee's ownership of the System and the System's status as personal property to all parties having an interest in or any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, or encumbrance of any nature (individually a "Lien," and collectively, "Liens") upon the real property and fixtures that are part of the Premises. If there is any Lien against the Premises that could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Lessor shall obtain a disclaimer or release of such Lien. Lessor consents to the filing of a disclaimer of the System as a fixture of the Premises

in the office where real estate records are customarily filed in the jurisdiction of the Premises, and any other filing by Lessee in a public office regarding its ownership of the System deemed necessary or appropriate by Lessee, and Lessor hereby appoints Lessee as its agent with regard to any such filing and authorizes Lessee to take required actions on Lessor's behalf required for such filing.

6.2.3 System Liens. Lessor shall not directly or indirectly allow any Lien on or with respect to the System by, through or under Lessor. If Lessor becomes aware of a Lien on the System by, through or under Lessor, Lessor shall promptly give Lessee written notice of such Lien and shall take such action as is necessary or appropriate to have such Lien discharged and removed. Lessor shall indemnify Lessee against all reasonable costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such Lien.

6.2.4 Premises Liens. Lessee shall not directly or indirectly allow any Lien by, through or under Lessee, on or with respect to the Premises or any interest therein, excluding Lessee's leasehold interest created pursuant to this Agreement and its rights in the System, or any other asset of Lessor, including, without limitation, any Lien arising from or relating to the construction, ownership, maintenance or operation of the System by Lessee. Lessee shall defend and indemnify Lessor against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such Lien.

6.3 Quiet Enjoyment. Lessee shall enjoy quiet and peaceful use, enjoyment and possession of the Project Area, free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, and neither Lessor nor any person claiming by, through or under Lessor shall disturb Lessee's quiet and peaceful use, enjoyment and possession of the Project Area.

6.4 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions or the Operations, including without limitation activities that may adversely affect the System's exposure to sunlight. Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Lease; (ii) take any action that will interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the purposes specified in this Lease; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

6.5 System Property of Lessee; Transfer of the Premises. Lessor acknowledges and agrees that (i) Lessee is the exclusive owner and operator of the System and all equipment (including, but not limited to, photovoltaic modules or panels, inverters, meters, wire, data monitoring equipment, and cabling), components and moveable property of Lessee attached to or used in the operation of the System up to the point of interconnection; (ii) no portion or component

of the System is a fixture; and (iii) in the event that the Premises are sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered (a “Transfer”), such Transfer shall not attach to or affect the System, or Lessee’s ownership rights to the System.

6.6 Transfer of Premises. Lessor shall not Transfer all or any portion of the Premises unless the transferee agrees in writing that its interest in the Premises is subject and subordinate in all respects to the terms of this Lease. Lessor shall give Lessee at least sixty (60) days’ prior notice of any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer.

6.7 Premises Security, Health and Safety. Lessor shall provide reasonable measures for the security of the Premises, including restricting access to the area on which the System is located and providing monitoring of the Premises’ security alarms, if applicable. Lessor shall maintain the Premises in a structurally sound and safe condition consistent with all applicable laws. If Lessor becomes aware of any circumstances relating to the System that creates an imminent risk of damage or injury to the System or any employee of Lessee, Lessor shall promptly notify Lessee.

6.8 System Security. Lessee may install all security measures that Lessee, in its sole discretion, determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, fences, barbed wire closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations.

6.9 Maintenance of Premises. Lessor shall, without interfering with the operation of the System, maintain the Premises in good condition and repair, including the integrity of the roof, so that Lessee is able to comply with its obligations under this Lease. Lessor shall use commercially reasonable efforts to maintain Lessor’s electrical energy equipment located on the Premises in good condition and repair so as to be able to receive and use the Energy generated by the System. Lessor shall maintain its connection(s) and service contract(s) with its local utility, or any successors thereto, so that Lessor can, upon any suspension or interruption of delivery of energy from the System, provide the Premises with its full requirements for electricity.

6.10 System Maintenance. During the Term, Lessee shall, at Lessee’s sole cost, maintain the System, the Project Area and all areas of the Premises used by Lessee in the Operations, in accordance with applicable laws and standard industry practices in such a manner so as not to unreasonably interfere with any other Rooftop Property and ensure that no damage or deterioration of the Building or the Building’s roof systems, including roof membrane and drain systems, results from the installation of the System or the Operations. Lessee shall promptly notify Lessor of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System or the Premises. Lessee or its contractors shall repair any damage to the System arising out of any circumstance, other than obligations of the Lessor identified in this Lease and the acts or omissions or malfeasance of Lessor’s agents or employees. All Maintenance and Repair conducted by or on behalf of Lessee shall be performed in a manner which would not reasonably be expected to void the warranty that Landlord holds on the roof (including roof membrane) or significantly damage the Roof.

6.11 Roof Maintenance. Lessor shall be solely responsible for, and bear all costs and expense relating to, maintaining the roof of the buildings on which the System is located, including all required repair (including leak repair), remediation and maintenance of such roof, unless and to the extent such repair, remediation and maintenance is required as a direct result of the installation, maintenance, or repair of the System. Lessor shall consult with Lessee before performing any required roof repair, remediation and maintenance that may affect the System, and Lessee shall be permitted to witness any such repair, remediation and maintenance. In the event the System must be temporarily disconnected or removed in order for Lessor to perform roof repair, remediation or maintenance, Lessor shall consult with Lessee in advance of any such activity, Lessee shall disconnect and remove the System at Lessor's expense, and Lessor shall pay to Lessee lost income and Environmental Attribute (defined below) damages for the period during which the System is disconnected. Lessor shall be responsible for maintaining and enforcing all warranties relating to the roof.

6.12 System Relocation. In the event of an emergency, Lessor may request that Lessee relocate the System, at Lessor's expense, to another suitable location on the Premises, provided that (a) the Parties shall use reasonable efforts to perform the relocation during the months of October through March and outside of normal business hours; and (b) Lessor shall pay to Lessee lost income and Environmental Attribute damages for the period during which the System is disconnected in connection with such relocation.

6.13 Clean Condition. Lessee shall not unreasonably clutter the Project Site or the Premises and shall collect and dispose of any and all of Lessee's refuse and trash.

6.14 Taxes. Lessor shall pay when due, if any, all real property taxes and assessments possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, imposed or levied against the Premises by any governmental body or public authority.

6.15 Environmental Attributes. The Parties further agree that all Environmental Attributes and Solar Incentives (defined below) belong solely to Lessee (and/or to any persons/entities listed as Lessee's permitted assigns or sub-lessee(s) in Section 15.1) and shall remain the personal property of Lessee (and/or of any persons/entities listed as Lessee's permitted assigns or sub-lessee(s) in Section 15.1 below) and shall not attach to or be deemed a part of, or fixture to, the Premises. The Solar Facility and other improvements shall at all times retain the legal status of personal property as defined under Article 9 of the Michigan Uniform Commercial Code. "Environmental Attributes" shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products with respect to the System. "Solar Incentives" include, without limitation, any accelerated depreciation, installation or production-based incentives, investment and production tax credits and subsidies arising from the System.

7. REPRESENTATIONS AND WARRANTIES

7.1 Representations of Lessor. Lessor represents and warrants to Lessee that:

7.1.1 Lessor has the requisite legal capacity to enter into this Lease and fulfill its obligations hereunder, that the execution and delivery by it of this Lease and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its board of directors or other governing body, and that the entering into of this Lease and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessor;

7.1.2 This Lease constitutes Lessor's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

7.1.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Lessor that would have a material adverse effect on the validity or enforceability of this Lease or the ability of Lessor to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessor;

7.1.4 Lessor owns the Premises in fee simple, subject to no liens or encumbrances except as set forth in Exhibit B. All persons or entities having any ownership or possessory interest in the Premises are signing this Agreement;

7.1.5 To Lessor's Knowledge, there are no Hazardous Materials on or under the Premises;

7.1.6 No governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Lease by Lessor or the performance by Lessor of its obligations hereunder which Lessor will be unable to obtain in due course; and

7.2 7.1.7 Representations of Lessee. Lessee represents and warrants to Lessor that:

7.2.1 Lessee has the requisite limited liability company capacity to enter into this Lease and fulfill its obligations hereunder, that the execution and delivery by it of this Lease and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its members, and by its board of managers or other governing body, and that the entering into of this Lease and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessee;

7.2.2 This Lease constitutes Lessee's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

7.2.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Lessee that would have a material adverse effect on the validity or enforceability of this Lease or the ability of Lessee to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessee; and

7.2.4 No governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Lease by Lessee or the performance by Lessee of its obligations hereunder which Lessee will be unable to obtain in due course.

8. DEFAULT; REMEDIES.

8.1 Lessee Default. Each of the following events shall constitute a “Lessee Default”:

8.1.1 Lessee materially breaches any term of this Lease and (i) if such breach is capable of being cured within thirty (30) days after Lessor’s notice of such breach, Lessee has failed to cure the breach within such thirty (30) day period, or (ii) if Lessee has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessee has failed to cure the breach within a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Lessor’s notice);

8.1.2 (i) Lessee commences a voluntary case under any bankruptcy law; (ii) Lessee fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessee in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessee remains undismissed or undischarged for a period of sixty (60) days;

8.1.3 Lessee attempts any Assignment of this Lease or Sublease of the Premises or any portion thereof in violation of the terms herein;

8.1.4 Lessee fails to carry or maintain the insurance required in this Lease or the PPA, and such failure is not cured within thirty (30) days following notice from Lessor of such failure; or

8.1.5 Failure by the Lessee to comply with the same term or condition of this Lease on three or more occasions (regardless of cure), if the Lessee has given Lessor notice of each prior failure within sixty (60) days after each such failure occurred and such failure has a material adverse effect on Lessor or the Premises.

8.2 Lessor’s Remedies. If a Lessee Default has occurred and is continuing, Lessor may terminate this Lease by written notice to Lessee following the expiration of the applicable cure period and may exercise any other remedy it may have at law or equity. The various rights and remedies reserved to Lessor in this Lease or otherwise shall be cumulative and, except as otherwise provided by Michigan law, Lessor may pursue any or all of its rights and remedies at the same time. No delay or omission of Lessor to exercise any right or remedy shall be construed as a waiver of the right or remedy or of any breach or Default by Lessee. In the absence of an express written waiver, no action by Lessor shall constitute a waiver of any preceding breach or Event of Material Default by Lessee of any provision of this Lease, regardless of Lessor’s knowledge of the preceding breach or Default, or (ii) a waiver of Lessor’s right to exercise any remedy available to Lessor by virtue of the breach or Event of Material Default. Tenant hereby waives any right of redemption or relief from forfeiture under Michigan law, or under any successor statute, in the event this Lease is terminated by reason of any breach or Event of Material Default by Lessee. No

act or thing done by Lessor or Lessor's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Lessor.

8.3 Lessor Defaults. The following events shall be defaults with respect to Lessor (each, a "Lessor Default"):

8.3.1 Lessor materially breaches any term of this Lease and (i) if such breach is capable of being cured within thirty (30) days after Lessee's notice of such breach and Lessor has failed to cure such breach within such thirty (30) day period or (ii) if Lessor has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessor has failed to cure the breach if not cured within a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Lessee's notice); or such longer cure period as may be agreed to by the Parties; and

8.3.2 (i) Lessor commences a voluntary case under any bankruptcy law or laws authorizing municipal insolvency proceedings; (ii) Lessor fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessor in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessor remains undismissed or undischarged for a period of sixty (60) days.

8.4 Lessee's Remedies. If a Lessor Default has occurred and is continuing, Lessee may terminate this Lease by written notice to Lessor following the expiration of the applicable cure period. Lessee may also exercise any other remedy it may have at law or equity, including recovering from Lessor all resulting damages, which damages shall include, but not be limited to, the lost income and Environmental Attribute damages and all other amounts of any nature relating to this Lease.

9. LIMITATIONS.

9.1 Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS LEASE. THE FOREGOING NOTWITHSTANDING, THE LOST INCOME AND ENVIRONMENTAL ATTRIBUTE DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

9.2 Equitable Relief. The Parties acknowledge that money damages would not be a sufficient remedy for any breach of this Lease, and that, accordingly, in the event of any such breach or threatened breach, either Party shall be entitled to immediately seek any and all remedies

available to it at law or in equity, including but not limited to an injunction or specific performance, from a court of competent jurisdiction.

10. FINANCING ACCOMMODATIONS.

10.1 Lessor Acknowledgment. Lessor acknowledges that Lessee may finance the System and that Lessee's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Lease and a security interest in the System. In order to facilitate such financing, and with respect to each party providing any such financing (a "Financing Party"), Lessor agrees as follows:

10.1.1 Consent to Collateral Assignment. Lessee shall have the right to assign this Lease as collateral for financing or refinancing of the System, and Lessor hereby consents to the collateral assignment by Lessee to any Financing Party of Lessee's right, title, and interest in and to this Lease.

10.1.2 Financing Party's Rights Following Default. Notwithstanding any contrary term of this Lease:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Lease in accordance with the terms of this Lease. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Lease and the System.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Lease and to perform any other act, duty, or obligation required of Lessee hereunder or cause to be cured any default or event of default of Lessee in the time and manner provided by the terms of this Lease. Nothing herein requires Financing Party to cure any default of Lessee (unless Financing Party has succeeded to Lessee's interests) to perform any act, duty, or obligation of Lessee, but Lessor hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Lessee to Financing Party, Financing Party shall give notice to Lessor of the transferee or assignee of this Lease. Any such exercise of remedies shall not constitute a Lessee Default.

(d) Upon any rejection or other termination of this Lease pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Lessor shall enter into a new site lease agreement with Financing Party or its assignee on substantially the same terms as this Lease.

10.1.3 Financing Party Cure Rights. Lessor shall not exercise any right to terminate this Lease unless Lessor has given prior written notice to each Financing Party of which Lessor has notice. Lessor's notice of an intent to terminate or suspend must specify the condition

giving rise to such right. Financing Party has the longer of thirty (30) days and the cure period allowed for a default of that type under this Lease to cure the condition; provided that if the condition cannot be cured within such time, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Lessor's and Lessee's obligations under this Lease shall otherwise remain in effect, and Lessor and Lessee shall be required to fully perform all of their respective obligations under this Lease during any cure period.

10.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Lessee's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 9.1.3, then this Lease shall continue in full force and effect.

10.2 Notice of Defaults and Events of Default. Provided Lessor has received notice by Lessee of the names and contact information of any Financing Party, Lessor agrees to deliver to each Financing Party a copy of all notices that Lessor delivers to Lessee pursuant to this Lease.

11. NOTICES.

11.1 Notices. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Lessee: New Energy Equity LLC
 2530 Riva Road, Suite 200
 Annapolis, MD 21401
 Attention: General Counsel
 jwrathall@newenergyequity.com
 Phone: 443-267-5012

To Lessor: City of Muskegon
 933 Terrace Steet
 Muskegon, MI 49440
 Attention: Frank Peterson, City Manager
 Phone: 231-724-6724

With a copy to: Chart House Energy LLC
 1310 11th St.
 Muskegon, MI 49441
 Attention: Rob Rafson
 Phone: 231-224-6153

12. GOVERNING LAW; DISPUTES.

12.1 Choice of Law. This Lease shall be construed in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles.

12.2 Disputes.

12.2.1 Management Negotiations. The Parties shall use all reasonable efforts to settle disputes through negotiation between authorized members of each Party's senior management. Either Party may, by written notice to the other Party, request a meeting to initiate negotiations to be held within fifteen (15) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within thirty (30) Business Days of their first meeting, either Party may pursue arbitration in accordance with Section 12.2.2.

12.2.2 Arbitration. Any controversy or dispute not amicably resolved by the Parties or through management negotiations shall be settled by binding arbitration. Either Party may initiate arbitration by giving written notice to the other Party. The notice shall state the nature of the claim or dispute, the amount involved, if any, and the remedy sought. The dispute shall be submitted to an independent arbitrator mutually selected by the Parties. If the dispute has a value in excess of \$100,000.00, then at the election of either Party, there shall be a panel of three (3) arbitrators. If the Parties do not mutually agree on the arbitrator(s), the Parties shall then utilize the American Arbitration Association (or another entity mutually acceptable to the Parties) to provide the required independent arbitrator(s). The decision of the appointed independent arbitrator(s) shall be final and binding on the Parties. In rendering a decision, the arbitrator(s) shall comply with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Notwithstanding that the Construction Industry Arbitration Rules may provide otherwise, the prevailing Party in any such arbitration shall be entitled to recover its arbitration costs, inclusive of counsel, expert, arbitrators' and administrative fees, from the losing Party, as determined by the arbitrator(s). Any such arbitration shall be conducted in New York, NY.

13. INDEMNIFICATION.

13.1 Lessee's General Indemnity. Lessee shall indemnify, defend, and hold harmless Lessor (including Lessor's permitted successors and assigns) and Lessor's subsidiaries, directors, officers, members, , employees and agents (collectively, "Lessor Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Lessor Indemnified Parties arising from or relating to (i) Lessee's breach of this Lease, (ii) the gross negligence or willful misconduct of Lessee or Lessee's invitees or (iii) Lessee's failure to timely surrender the Premises to Lessor at the end of the Term or upon a final termination pursuant to Section 8.2, subject to the applicable provisions of this Lease and the PPA. Lessee's indemnification obligations under this Section 13.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessor Indemnified Party.

13.2 Lessee's Environmental Indemnity. Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties against, any claims, costs, damages, fees, or penalties

arising from a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

13.3 Lessor's General Indemnity. To the limited extent permissible under State of Michigan law, Lessor shall indemnify, defend, and hold harmless Lessee (including Lessee's permitted successors and assigns) and Lessee's subsidiaries, directors, officers, members, employees and agents (collectively, "Lessee Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including lost income to System Owner under the PPA, and reasonable attorneys' fees, incurred by Lessee Indemnified Parties arising from or relating to (i) Lessor's breach of this Lease, (ii) the gross negligence or willful misconduct of Lessor or Lessor's invitees, or (iii) the failure of building or roof to support, in whole or in part, the System as installed, including changes in roof surface incline. Lessor's indemnification obligations under this Section 13.3 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessee Indemnified Party. Nothing herein shall be construed as a waiver of the defense of Governmental Immunity or a waiver of statutory or constitutional limitations on governmental indemnity.

13.4 Lessee's Environmental Indemnity. To the limited extent permissible under State of Michigan Law, Lessor shall indemnify, defend and hold harmless the Lessee Indemnified Parties for, from, and against, any claims, costs, damages, fees, or penalties, including lost income and Environmental Attribute damages, arising from the presence of any Hazardous Materials on or under the Premises, except to the extent that such presence is attributable to a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises. Nothing herein shall be construed as a waiver of the defense of Governmental Immunity or a waiver of statutory or constitutional limitations on governmental indemnity.

14. INSURANCE.

14.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Term, with insurers of recognized responsibility authorized to do business in the State in which the System will be located, assigned an A.M. Best rating of no less than A IX, insurance coverage in the amounts and types set forth on Exhibit D. Each policy of insurance maintained by Lessor shall (a) name Lessee as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Lessee. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

14.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any

set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

14.3 No Waiver of Obligations. The provisions of this Lease shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

15. MISCELLANEOUS.

15.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Lease without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Lessee may assign any of its rights, duties, or obligations under this Lease, without the consent of Lessor, (i) to any of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

15.2 Force Majeure. To the extent either Party is prevented by an event of Force Majeure (as defined in the PPA) from performing its obligations under this Agreement, such Party shall be excused from the performance of its obligations under this Agreement, provided that:

a) The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion;

b) The non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure;

c) The suspension of performance is of no greater scope and of no longer duration than is required;

d) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure;

e) when the non-performing Party is able to resume performance of its obligations under this Agreement that Party shall give the other Party written notice to that effect;

f) any milestone or date for performance under this Agreement affected by such Force Majeure shall be deemed to be extended on a day-for-day basis for the duration of the Force Majeure event or condition, and

g) Notwithstanding the foregoing, no Party may claim relief by reason of Force Majeure from a simple requirement to pay money due hereunder.

15.3 Entire Agreement. This Lease represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

15.4 Amendments. This Lease may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Lessee and Lessor.

15.5 No Partnership or Joint Venture. Lessee and Lessee's agents, in the performance of this Lease, shall act in an independent capacity and not as officers or employees or agents of Lessor. This Lease shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Lease).

15.6 Headings; Exhibits. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease. Any Exhibits referenced within and attached to this Lease, including any attachments to the Exhibits, shall be a part of this Lease and are incorporate by reference herein.

15.7 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Lease, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

15.8 Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

15.9 Severability. If any part, term, or provisions of this Lease is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Lease and shall not render this Lease unenforceable as a whole. Instead, the part of the Lease found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

15.10 Counterparts and Facsimile Signatures. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (".PDF") signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

15.11 No Partnership or Sale. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent,

partnership, joint venture, buyer and seller of real property, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

15.12 Memorandum of Lease. Lessor and Lessee agree to execute and record a memorandum of this Lease. Lessor shall execute, with notarization, and deliver to Lessee together with the its initial delivery of the signed Lease a recordable Memorandum of Lease in a form reasonably acceptable to the Parties (“Memorandum of Lease”), which shall include the Exhibit A description of the Premises and which Lessee shall then record in the Official Records of the County in which the Premises are located. Lessee shall be responsible for the cost of recordation.

15.13 Estoppel Certificate. From time to time, upon written request by Lessee, Lessor shall provide within seven (7) days thereafter an estoppel certificate attesting, to the knowledge of Lessor, of Lessee’s compliance with the terms of this Lease, or detailing any known issues of noncompliance.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Rooftop System Site Lease Agreement to be duly executed and delivered as of the Effective Date.

LESSEE

LESSOR

New Energy Equity LLC

City of Muskegon, Michigan

By: _____

Name:

Title:

By: _____

Name:

Title:

EXHIBIT A

PREMISES; PROJECT SITE; PROJECT AREA

Site Address: 470 W. Western, Muskegon, MI 49440



Exhibit A

EXHIBIT B

ENCUMBRANCES ON LESSOR'S TITLE

Per the City of Muskegon, there are no encumbrances on this property. (Placeholder, waiting on response from the City)

EXHIBIT C

SYSTEM DESCRIPTION

MERCY HEALTH ARENA

General Information		
Project Address	470 W. Western, Muskegon, MI 49440	
Utility Territory	Consumers Energy	
System Size DC	449.28	kW
System Size AC	400	kW
DC System Voltage	480	V
AC System Voltage	480 V Three Phase	V

Project Equipment		
Data Acquisition System	SolarEdge	
Module		
Manufacturer	Hanwha	
Module Size	390W	
# Modules	1,152	
Inverter		
Manufacturer	SolarEdge	
Inverter Size	100kW	
# Inverters	4	
Racking		
Description	Ballasted roof mount	
Manufacturer	Aerocompact	
Inter Row Spacing	2ft	
Tilt	10	
Azimuth	180	

EXHIBIT D

INSURANCE REQUIREMENTS

(a) Lessee shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Lessor shall be named as an additional insured under this liability insurance, provided however that Lessee shall in no event be obligated to repair or replace Lessor's buildings or Premises;

(ii) Lessee may satisfy the insurance requirements contained in this Lease though any combination of primary and/or excess coverage; and

(iii) Lessee may elect to self-insure any or all of the insurance requirements contained in this Lease.

(b) Lessor shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than one million dollars (\$1,000,000) combined single limit per occurrence and annual aggregate. Lessee shall be named as an additional insured under this liability insurance;

(ii) All-risk property insurance with coverage equal to the replacement value of the Premises. Lessee shall be named as an additional insured under this policy;

(iii) Lessor may satisfy the insurance requirements contained in this Lease though any combination of primary and/or excess coverage; and

(iv) Lessor may elect to self-insure any or all of the insurance requirements contained in this Lease.

EXHIBIT E

EASEMENT DIAGRAM

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8 th , 2021	Title: Mercy Health Arena Power Purchase Agreement
Submitted By: Leo Evans	Department: Public Works
Brief Summary: Staff is seeking authorization to enter into a Power Purchase Agreement with New Energy Equity to install a solar array on the roof of the Mercy Health Arena.	
Detailed Summary: This topic was previously discussed at the July 2020 work session meeting, and again at a meeting in April 27 th to recommend a property tax exemption for the site. Staff has worked with Charthouse Energy and New Energy Equity, along with separate expert legal counsel from Miller, Canfield, Paddock and Stone to prepare the necessary documents to facilitate the installation and operation of a solar array on the roof of the Mercy Health Arena. This installation as designed should recognize substantial energy savings over the life of the system. This document outlines the policies and rates the City will pay to purchase the generated solar power. There is no up-front cost to the city related to the installation of the solar array.	
Amount Requested: \$0	Amount Budgeted: \$0
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Approve the Power Purchase Agreement and authorize the City Manager to sign.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

Power Purchase Agreement

New Energy Equity LLC

And

City of Muskegon

2530 Riva Road, Suite 200

Annapolis, MD 21401

Main: 443-267-5012

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of May 28, 2021 (the "Effective Date") by and between **New Energy Equity LLC**, a Delaware limited liability company ("Seller" or "System Owner"), and the **City of Muskegon, Michigan** ("Purchaser" or "Host"). Each of Seller and Purchaser are sometimes referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller intends to build, own and operate a photovoltaic solar electrical generation system on the Premises that is described in detail in Exhibit B (the "System," as further defined in Exhibit A of this Agreement); and

WHEREAS, the Premises are owned by the Host; and

WHEREAS, Host and Seller are parties to that certain Rooftop System Site Lease Agreement dated of even date herewith (the "Site Lease"), pursuant to which Host has leased to Seller the Premises (as defined in the Site Lease) and granted to Seller certain easements over, across, through, under, about and on the Premises for the installation, maintenance, and operation of the System;

WHEREAS, Seller desires to generate, sell and deliver to Purchaser, and Purchaser desires to purchase and receive from Seller, all electricity that may be generated by the System for the Term of this Agreement (as defined in Article 2, below) and otherwise on the terms and subject to the conditions set forth herein; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

AGREEMENT

1. DEFINITIONS

1.1 DEFINITIONS AND RULES OF INTERPRETATION. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the meanings specified in this Exhibit A; (b) the singular shall include the plural and vice versa; (c) references to "articles", "sections", "schedules", "annexes", "appendices" or "exhibits", if any, shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits hereof; (d) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular Article or subparagraph hereof; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) the words "include," "includes" and "including" mean include, includes and including "without limitation;" (h) references to this Agreement shall include a reference to all appendices, annexes, schedules

and exhibits hereto as the same may be amended, modified, supplemented or replaced from time to time; and (i) the masculine shall include the feminine and neuter and vice versa.

2. INITIAL TERM; ADDITIONAL TERMS; TERMINATION; END OF TERM

2.1 Contract Term. The Contract Term of this Agreement shall commence on the Effective Date and, unless sooner terminated in accordance with the terms hereof, shall continue until a date that is twenty-five (25) years from the first day of the month following the month in which the Commercial Operation Date of the System occurs (the "Expiration Date").

2.2 Additional Terms. Not less than sixty (60) days before the Expiration Date of the then current Contract Term or Additional Term, the Parties may agree to extend the Agreement for up to two (2) additional terms of five (5) years each (each, an "Additional Term"). The "Term" of this Agreement shall be the Contract Term under Section 2.1 plus any Additional Terms. If the Parties agree to extend the Contract Term for an Additional Term, this Agreement shall continue in full force and effect pursuant to the terms and conditions set forth herein, except that the Energy Rate to be applicable during such Additional Term will be set at a rate that is no higher than fifteen percent (15%) lower than the all-inclusive average rate paid by Purchaser for electricity and delivery of electricity from both (if applicable) the Utility and any retail suppliers supplying electricity to Purchaser averaged over the prior 12 month period (the "Utility Rate") calculated as of the date that the Additional Term commences. The Energy Rate shall be reset on each annual anniversary of such Additional Term's Effective Date thereafter, based on the then-current all-inclusive rate paid by Purchaser for electricity and delivery of electricity.

2.3 Early Termination. Either Party shall have the right, but not the obligation, to terminate this Agreement (in whole or in part) prior to the Expiration Date only upon the occurrence of:

- (a) an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or service and which imposes substantive non-ministerial regulatory requirements on the Party seeking termination which will have a material adverse effect on such Party's rights, obligations, or benefits under this Agreement;
- (b) the final termination of the Lease by its terms and conditions for any reason prior to the conclusion of the Term; or
- (c) In the event that the Notice to Proceed Date has not occurred within one year of the Effective Date, either Party may terminate this Agreement upon thirty (30) days' written notice to the other party delivered at any time prior to the actual Notice to Proceed Date; provided, however, that the foregoing date shall be extended on a day-for-day basis for any Force Majeure occurring after the Effective Date and prior to the Notice to Proceed Date.

2.4 End of Term. In the event Purchaser declines to exercise its Purchase Option provided in Article 7 of this Agreement, in connection with the final Purchase Option during the Contract Term, then, at least thirty (30) days before the expiration of the Contract Term, the Parties

shall, if desired, use commercially reasonable efforts to negotiate and document an extension of the Contract Term agreeable to each Party in their sole discretion.

2.5 Obligations upon Termination, Early Termination or Expiration. If Purchaser does not exercise its option to purchase the Systems pursuant to Article 7 or terminates the Agreement pursuant to Article 2.3, upon the expiration or termination of this Agreement, Seller shall remove the System from the Site at Seller's expense within one hundred eighty (180) days of that expiration or termination. In such event, Seller shall remove the Systems and restore the Sites in accordance with Good Industry Practices.

2.6 System Removal. At the conclusion of the Contract Term, if the Purchaser does not exercise its right to purchase the System, or in the event the Parties fail to reach agreement regarding an extension of the Agreement, then Seller shall, within one hundred eighty (180) days after the date of expiration of the Contract Term, remove the System from the Premises, provided that Seller shall not be required to remove electrical wiring or infrastructure, or any portion of the System below grade level. Other than as specifically provided otherwise herein or in the Site Lease, the removal of the System shall be at the cost of Seller.

3. PURCHASE AND SALE OF ENERGY.

3.1 Sale of Energy. Beginning on the Commercial Operation Date for the System, and subject to the terms and conditions of this Agreement, Seller shall sell to Purchaser and Purchaser shall purchase from Seller all of the Energy, as and when the same is produced, at the Energy Price in effect at the time of delivery as identified in Exhibit D. Subject to any provision of this Agreement, Seller shall deliver the Energy to the Delivery Point, and Purchaser shall accept the Energy so delivered for the full Contract Term.

- (a) If, for any reason, Purchaser's electric requirements are less than the System's Energy Output, Purchaser shall accept and pay for all Energy produced by System pursuant to the terms of this Agreement. To the extent permitted by law, Purchaser may deliver any excess Energy to the Utility in accordance with the Net Metering Rules or Net Metering Agreement entered with the Utility. Seller shall provide reasonable assistance to Purchaser in arranging and coordinating such deliveries or exchanges; provided, that Seller shall not be responsible for any third-party costs.
- (b) To the extent that Purchaser's electricity requirements exceed the System's Energy Output, Purchaser shall purchase such excess electricity from Utility. Purchaser acknowledges that this Agreement is in no way intended to replace Purchaser's Utility electrical service. Such service shall remain Purchaser's primary source of electricity and, subject to Reliability requirements of Section 4.9, no minimum level of Energy production is guaranteed by Seller hereunder. Purchaser shall be responsible for all tariffs, applicable taxes, penalties, ratcheted demand or similar charges assessed by Utility for transmission and distribution service and other services necessary to meet its full energy requirements.

- (c) The estimated production of the System is set forth in Exhibit C (“Estimated Production”). Purchaser shall be entitled to utilize the entire Energy Output of the System; provided, however, that subject to the System Reliability requirements of Section 4.9, Seller shall not be required to deliver a minimum amount, or any other specific quantity, of Energy from the System. Anything herein to the contrary notwithstanding, there is no guarantee that Purchaser will realize any energy cost savings as result of this Agreement or the purchase of Energy from the System.
- (d) Following the Commercial Operation Date, in the event the System fails to generate any Energy for one hundred twenty (120) consecutive days for reasons other than Force Majeure, system upgrades pursuant to Section 4.7, Purchaser’s breach of this Agreement or Host’s breach of the Site Lease or this Agreement (an “Unexcused Outage”) then, beginning on the 120th day and for each subsequent consecutive day of an Unexcused Outage, Seller will pay the Purchaser on a monthly basis in arrears the positive difference, if any, between the Energy Rate Purchaser would have paid for Energy Output for the System and the Utility Rate of the quantities of Energy Output that Purchaser obtains to replace the estimated energy output that would have been achieved. Utility generated electricity realized over the prior six months until the end of such Unexcused Outage. Subject to Sections 2.4 and 2.5, this Section shall be Purchaser’s sole and exclusive remedy for any Unexcused Outage. In the Event the System fails to generate Energy for three hundred sixty (360) consecutive days, then either Party may terminate this Agreement upon thirty (30) days’ written notice to the other Party delivered at any time prior to the date on which the System resumes generating Energy, with no further obligation relating to any Unexcused Outage. Termination under this Section shall not constitute Early Termination or Breach on behalf of the Purchaser.
- (e) THE PARTIES AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE UNDER THE PRESENTLY KNOWN AND ANTICIPATED FACTS AND CIRCUMSTANCES TO ASCERTAIN AND FIX THE AMOUNT OF ACTUAL DAMAGES THAT WOULD BE SUFFERED DUE TO UNEXCUSED OUTAGES, INCLUDING THOSE LASTING MORE THAN 180 DAYS. THEREFORE, THE PARTIES ACKNOWLEDGE THAT THE AMOUNTS DESCRIBED IN SECTION 3.1(d) ARE A FAIR AND REASONABLE DETERMINATION OF THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED BY PURCHASER FOR UNEXCUSED OUTAGES, AND THAT SUCH AMOUNTS DO NOT CONSTITUTE A PENALTY.

3.2 Environmental Attributes and Incentives.

- (a) Environmental Attributes. Seller shall have all right, title, and interest in and to all Environmental Attributes related to the System. At Seller’s

expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Attributes related to the System.

- (b) Environmental Incentives. Seller shall have all right, title, and interest in and to all Environmental Incentives attributed to the System. Any Environmental Incentive attributed to the System that is initially credited or paid to Purchaser shall be assigned by Purchaser to Seller without delay. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Incentives related to the System.
- (c) Purchaser Assistance with Environmental Attributes and Incentives. Purchaser shall promptly assist and cooperate with Seller in acquiring and maintaining in effect all necessary permits and approvals for the System from Governmental Authorities relating to Environmental Attributes and Incentives. If informed by Seller, Purchaser shall comply with all laws, regulations and rules relating to acquiring and maintaining Environmental Attributes and Environmental Incentives. Purchaser shall deliver to Seller copies of any documentation related thereto that is required by law to be in the name or physical control of Purchaser. Seller shall reimburse Purchaser for its reasonable and necessary third-party costs incurred in relation to Purchaser's assistance with such matters.
- (d) Impairment of Environmental Attributes and Incentives. Purchaser shall not take any action or suffer any omission that could reasonably be expected to have the effect of reducing or impairing the value to Seller of the Environmental Attributes and Environmental Incentives. Acknowledging that Purchaser is not an expert in Environmental Attributes and Incentives, Purchaser shall use commercially reasonable efforts to seek counsel and advice from an expert, and consult with Seller, prior to engaging in any matter that could reasonably be perceived as affecting the Systems, and to promptly notify Seller of any event, action or omission that could have the effect of reducing or impairing the value of the Environmental Attributes and Environmental Incentives. Upon the occurrence of any such event, action or omission, Purchaser shall consult with Seller as necessary to prevent reduction or impairment of the value of Environmental Attributes and Environmental Incentives.

3.3 Estimated Purchaser Savings. Purchaser acknowledges that the Calculation of Estimated Benefits attached hereto as Exhibit F is solely an estimate of the ongoing costs and benefits that Purchaser may anticipate. Purchaser specifically acknowledges that the Calculation is an estimate based upon several variables that may change, resulting in a change in the amount and nature of the benefits. Purchaser agrees and acknowledges that (a) Seller has made no representations, warranties, or covenants with respect to any cost savings or benefits that Purchaser may obtain in connection with this Agreement and (b) Purchaser may in fact either save money or incur greater costs than otherwise would have occurred in the absence of entering into this Agreement.

4. THE SYSTEM.

4.1 Installation, Operation, and Maintenance of the System. Seller shall be responsible for the installation, operation, and maintenance of the System in a manner consistent with the Site Lease. If the supply of Energy from the System is interrupted as a result of malfunction or other shutdown, Seller shall use commercially reasonable efforts to remedy such interruption. Both Parties shall comply with all applicable laws and regulations relating to the operation of the System and the generation and sale of Energy, including obtaining and maintaining in effect all relevant approvals and permits.

4.2 Interconnection with Utility.

- (a) The System will be interconnected by the Utility with the electrical grid.
- (b) RESERVED
- (c) Seller shall have sole responsibility for resolving any disputes with Utility regarding the amount of energy production from the System, and shall also have sole discretion over any such resolution.
- (d) Purchaser shall be solely responsible for resolving any disputes with Utility regarding the rate applied to Energy production and the amount paid by Utility to Purchaser, as defined and governed by the applicable tariff. Any conflict between the terms of this Agreement and the Tariff shall be resolved in favor of the tariff.
- (e) Seller agrees and acknowledges that this Agreement represents the agreement between the Parties with respect to the interconnection of the Systems to the Purchaser's Electrical System, and for Energy to flow from the System to the applicable Point of Delivery. Seller shall, at no cost to Purchaser, apply for and pay all application fees associated with the interconnection of the System to Purchaser's Electrical System at the Site. Seller shall also be responsible to procure and pay for all equipment necessary to interconnect the System to Purchaser's Electrical System.
- (f) Purchaser agrees and acknowledges that Purchaser shall be responsible to pay for costs related to the interconnection between Purchaser and the Utility's Electrical System, including (a) any upgrades to Purchaser's Premises or the Utility's distribution system that are necessary for interconnection and (b) the costs of any studies that may be required by the Utility with respect to such upgrades.

4.3 Maintenance of Health and Safety. Seller shall take all reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the System and shall comply with all applicable health and safety laws, rules, regulations, and permit requirements. If Seller becomes aware of any circumstances relating to the Premises or the System that creates an imminent risk of damage or injury to any Person or any Person's property (and, should Purchaser become aware of such circumstances, Purchaser shall promptly notify Seller with

respect thereto), Seller shall take prompt action to prevent such damage or injury and shall promptly notify Purchaser. Such action may include disconnecting and removing all or a portion of the System, or suspending the supply of Energy to Purchaser.

4.4 Assistance with Permits and Licenses. Upon Seller's request, Purchaser shall assist and cooperate with Seller, to acquire and maintain approvals, permits, and authorizations or to facilitate Seller's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including providing any building owner or occupant authorizations, signing and processing any applications for permits, local utility grid interconnection applications and utility easements, and rebate applications as are required by law to be signed by Purchaser. Purchaser shall also deliver to Seller copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law in the name or physical control of Purchaser. Seller shall reimburse Purchaser for reasonable and necessary third-party costs incurred by Purchaser in relation to Purchaser's assistance with such matters.

4.5 Commercial Operation Date. Seller shall use commercially reasonable efforts to cause the installation of the System to be completed and to achieve a Commercial Operation Date on or before October 31, 2021 (the "Target COD"), and shall ensure that the System is completed and a Commercial Operation Date is achieved on or before March 31, 2022 (the "Outside COD"). In the event that the Systems has not achieved Commercial Operation Dates on or before the Outside COD, other than as result of Force Majeure or Purchaser's breach of the Site Lease or this Agreement, the Seller will pay the Purchaser on a monthly basis in arrears the positive difference, if any, between the Energy Rate Purchaser would have paid for Energy Output for the System and the Utility Rate of the quantities of Energy Output that Purchaser obtains to replace the estimated energy output that would have been achieved measured on a daily basis from the Outside COD date until the Commercial Operation Date for the subject System. The Parties may agree to amend this Agreement to revise the Outside COD (the "Revised Outside COD"). In the event that the System has not achieved the Commercial Operation Date on or before the Revised Outside COD, the Parties may, in their discretion, negotiate to amend this Agreement to further revise the Outside COD, along with any other provisions of this Agreement affected by the failure to achieve the Commercial Operation Date on or before the Revised Outside COD. Seller shall deliver notice to Purchaser (5) days prior to the occurrence of the Commercial Operation Date.

- (a) Conditions to Commercial Operation. Seller will notify Purchaser in writing when the System has achieved Commercial Operation. This notification shall provide documented evidence of the satisfaction or occurrence of all of the conditions set forth in this Section 4.5 (the "Conditions") and shall include a declaration by Seller to that effect. In the event of a dispute regarding the Commercial Operation Date, such dispute will be resolved subject to Section 16.2. The Conditions are:
 - (i) The System is capable of delivering Energy Output to the Point of Delivery;
 - (ii) Seller has provided a list of the System's major equipment, showing the make, model and nameplate capacity of such equipment, and has certified the nameplate capacity of the System;

- (iii) The System has, if applicable, demonstrated the reliability of its communications systems; and
- (iv) Seller has certified that all permits, consents, licenses, approvals, and authorizations required to be obtained by Seller from any Governmental Authority or Utility to operate the System in compliance with applicable law and this Agreement have been obtained and are in full force and effect and that Seller is in compliance with the terms and conditions of this Agreement in all material respects.

4.6 Notice of Damage. Purchaser shall promptly notify Seller of any physical conditions or other circumstances of which Purchaser becomes aware that indicate there has been or might be damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System. Failure to provide notice under this Section 4.6 shall not be a material breach of this Agreement.

4.7 System Upgrades. At any time, following notice to Purchaser, Seller may upgrade the System; provided that the upgraded System complies with this Agreement and applicable laws and, provided further, that if any System upgrade would increase the annual Estimated Production by more than ten percent (10%) percent, then Seller shall obtain Purchaser's prior written consent before performing the System upgrade. In order to perform any System upgrades, Seller may disconnect the System and interrupt Energy deliveries, provided that Seller shall complete such upgrades and re-connect the System within 180 days of commencing the upgrades.

4.8 Purchaser's Taxes. Purchaser is responsible for paying all taxes, if any, arising from Purchaser's purchase of the Energy as well as all real and personal taxes assessed against either the Premises or the System. Seller shall provide reasonable assistance to Purchaser in the negotiation of payment in-lieu of tax agreements with the relevant taxing authorities.

4.9 System Reliability. Beginning on the Commercial Operation Date, and continuing through the end of the Term, the System's Energy Output capacity shall be not less than eighty-five percent (85%) of the Estimated Production identified in Exhibit B (the "Guaranteed Minimum Generating Capacity"), as measured over any three (3) consecutive Commercial Operation Years (the "Energy Measurement Period"), for any reason other than (i) Purchaser's breach of its obligations under this Agreement or the Lease, (ii) a System upgrade or Downgrade that has been agreed to in writing, or (iii) a Force Majeure event. In the event the Energy Output delivered to Purchaser over any Energy Measurement Period is less than the Guaranteed Minimum Generating Capacity for such period, then Seller shall, within forty-five (45) days following the end of such Energy Measurement Period, pay to Purchaser an amount equal to the product of (A) the difference between the Guaranteed Minimum Generating Capacity and the actual Energy Output delivered, and (B) the difference, if any, between Purchaser's average Utility Rate over such Energy Measurement Period minus the applicable Contract Price for such period.

5. PAYMENT

5.1 Consideration for Energy Delivered. As consideration for the delivery of Energy by Seller, Purchaser shall pay for Energy delivered hereunder at the applicable Energy Price.

5.2 Invoicing. Seller shall be responsible for reading the Electric Metering Devices at the end of each calendar month. Seller shall invoice Purchaser for Energy on a monthly basis. Seller shall deliver each invoice within thirty (30) Business Days after the end of each monthly billing period. Each invoice shall set out the amount of Energy delivered in kWh during such billing period, the then-applicable Energy Price, and the total amount then due to Seller, including any taxes assessed on the sale of Energy to Purchaser, offsets for amounts due from Seller to Purchaser pursuant to Section 3.1, and credits due to Purchaser under Section 6.5(e). The amount due shall be prorated for any partial month during the Contract Term. Such invoice shall include sufficient detail so that Purchaser can reasonably confirm the accuracy of the invoice including, among other details, beginning and ending meter readings. Purchaser shall pay the amount due to Seller on a net thirty (30) basis after receipt of each invoice. Payments not made within 30 days of receipt of Seller's invoice shall be subject to interest at the Interest Rate until paid.

5.3 Disputed Amounts. A Party may in good faith dispute the accuracy of any invoice (or any adjustment to any invoice) under this Agreement at any time within thirty (30) days following the receipt of the invoice (or invoice adjustment). In the event of such a dispute, such Party shall nonetheless pay the full amount of the applicable invoice or invoice adjustment on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give written notice of the objection to the other Party. Any required refund following resolution of such dispute shall be made within five (5) Business Days after final resolution thereof, together with interest accrued at the Interest Rate from the original payment due date to the date refunded.

5.4 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years, and Seller shall grant Purchaser reasonable access to those books, records, and data at the principal place of business of Seller or by providing electronic copies. Purchaser may examine such books and records relating to transactions under, and administration of, this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours, however not more than once per year.

5.5 Change in Law. The Parties acknowledge and agree that the Energy Price is based on assumptions related to the availability to the Seller of the Environmental Incentives. In the event of the elimination or alteration of one of more Environmental Incentives or any other change in law that results in a material adverse economic impact on Seller in respect to this Agreement, the Parties shall work in good faith to amend this Agreement within thirty (30) Business Days after such elimination or alteration as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties. If the Parties fail to enter into such an amendment by the end of such thirty (30) Business Day period, Seller may terminate this Agreement without penalty, and Seller shall remove the System from the Premises within one hundred eighty (180) days of such termination.

6. DELIVERY; CURTAILMENT; INSOLATION; METERING.

6.1 Delivery. The System Point of Delivery shall be at the point of connection, as depicted on Exhibit B. Seller shall deliver Energy Output hereunder in the form of three-phase sixty-cycle alternating current at or exceeding the quality standards of the Utility. Seller shall bear the risk of electric losses up until the Point of Delivery and shall be responsible for costs required to deliver the Energy Output to the Point of Delivery, but shall not be bear any risk of loss after the Energy Output has been delivered to the Point of Delivery.

6.2 Purchaser's Failure to Accent Delivery. On and after the Commercial Operation Date, if, there exists no breach or default by Seller under this Agreement and Purchaser fails to accept all or any amount of the Energy Output for the applicable System for any reason other than an event of Force Majeure, such event shall constitute a Purchaser Curtailment and be treated in accordance with Section 6.3, below.

6.3 System Casualty. Following any event resulting in material damage or destruction to, or loss of the System, Seller shall have the option, in its sole discretion, to repair or replace the System or to terminate this Agreement. Seller shall notify Purchaser in writing of its election within thirty (30) days after the date of the damage to the System. Seller shall under all circumstances be entitled to all insurance proceeds with respect to the System. If Seller elects to repair or replace the System, Seller shall undertake such repair or replacement as quickly as practicable. If Seller elects to terminate this Agreement, the termination shall be effective immediately upon delivery of the notice under this Section 6.3.

6.4 Curtailment.

- (a) Each Party shall have the right to request curtailment of Energy Output upon sufficient prior written notice, and Energy Output shall be curtailed pursuant to such request. The Parties agree that each Party will be allotted ~~one (1)~~ two (2) four (4) hour curtailment per Commercial Operation Year for any reason (the "Curtailment Allotment"). The Parties agree that if the number or duration exceed the Curtailment Allotment during periods when one Party invokes such curtailment option (i) the requesting Party shall be liable for Liquidated Damages in the manner set forth below; and (ii) Seller shall have no right to remarket the Energy Output that is curtailed. Subject to the provisions set forth in the Lease with respect to a relocation of a System, the remedy provided in this Section 6.3 shall be the sole and exclusive remedy of Seller for any such voluntary curtailment requested by Purchaser. Seller will have no obligation to reimburse Purchaser if the Curtailment Allotment is not used and the Parties agree there will be no carry forward from one year to the next.
- (b) If Seller exceeds its Curtailment Allotment, it shall pay the Purchaser on a monthly basis in arrears the positive difference, if any, between the Energy Rate Purchaser would have paid for Energy Output for the System and the Utility Rate of the quantities of Energy Output that Purchaser obtains to replace the estimated energy output that would have been achieved.

- (c) If Purchaser exceeds its Curtailment Allotment, it shall pay the Seller on a monthly basis in arrears an amount equal to the average Energy Output of the prior three months, prorated for the duration of the exceeded Curtailment Allotment.

6.5 Electric Metering Devices.

- (a) Metering of Delivery. Seller shall measure the amount of Energy supplied to Purchaser at the Delivery Point using a commercially available, revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. Purchaser shall cooperate with Seller to enable Seller to have reasonable access to the meter as needed to inspect, repair, and maintain such meter. At Seller's option, the meter may have standard industry telemetry and/or automated meter reading capabilities to allow Seller to read the meter remotely. If Seller elects to install telemetry allowing for remote reading, Purchaser shall allow for the installation of necessary communication lines and shall reasonably cooperate in providing access for such installation. The meter shall be kept under seal, such seal to be broken only when the meter is to be tested, adjusted, modified, or relocated. In the event that either Party breaks a seal, such Party shall notify the other Party as soon as practicable.
- (b) Back-Up Metering. Either Purchaser or Seller may, subject to the approval of the other Party, such approval not to be unreasonably withheld, elect to install and maintain, at the installing Party's own expense, backup metering devices ("Back-Up Metering") in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to Purchaser. The installing Party, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of such Party to witness and verify, such inspections and tests, provided, however, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the other Party to inspect or witness the testing of Back-Up Metering, provided, however, that such other Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

- (c) Net Metering. Seller shall deliver all Energy Output generated by the System to Purchaser at the applicable Delivery Point. Purchaser shall be responsible for delivery of any Energy Output generated by the System that is not consumed by Purchaser at the Site pursuant to the then applicable Utility net metering requirements. Seller shall provide reasonable assistance to Purchaser in applying for and establishing the Utility net metering agreements that may be necessary. Purchaser shall reimburse Seller for its reasonable and necessary third-party costs incurred in relation to Seller's assistance with such matters.
- (d) Meter Verification. On each of the fifth, tenth, fifteenth and twentieth anniversaries of the Commercial Operation Date, or earlier at Seller's discretion, Seller shall test the meter and provide copies of any related test results to Purchaser. The tests shall be conducted by a qualified independent third party. Seller shall notify Purchaser seven (7) days in advance of each such test, and shall permit Purchaser to be present during such tests. If a meter is inaccurate, Seller shall promptly cause the meter to be repaired or replaced. If a meter is accurate or inaccurate by two percent (2%) or less, then Purchaser shall pay the costs of the meter testing. If a meter is inaccurate by more than two percent (2%), then Seller shall pay for the costs of the meter testing. If a meter is inaccurate by more than two percent (2%) and the duration of such inaccuracy is known, then prior invoices shall be adjusted accordingly and any amounts owed to Purchaser shall be credited against future invoices for Energy deliveries. If a meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior invoices shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during the twelve-month period preceding the test and any amounts owed to Purchaser shall be credited against future invoices for Energy deliveries.

7. OPTION TO PURCHASE SYSTEM.

7.1 Grant of Purchase Option. Seller hereby grants to Purchaser the right and option to purchase all of the Seller's right, title, and interest in and to the System on the terms set forth herein ("Purchase Option"). Purchaser may exercise the Purchase Option on either the sixth (6th), tenth (10th), fifteenth (15th) or twentieth (20th) anniversary of the Commercial Operation Date, or simultaneously with the termination of this Agreement (collectively, the "Purchase Option Dates"), provided that no Purchaser Event of Default, or any event which with the passage of time will become a Purchaser Event of Default, has then occurred and is ongoing.

7.2 Determination of Purchase Price. Purchaser may, on or at any time within thirty (30) days before each Purchase Option Date, request a determination of the purchase price under the Purchase Option (the "Purchase Price"). The Purchase Price shall be the fair market value of the System, as determined by an independent appraiser retained by the Parties (the "Independent Appraiser"). The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational

characteristics of the System, and who specifically has prior experience valuing solar energy generating facilities. The Independent Appraiser shall be reasonably acceptable to both Seller and Purchaser. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or their respective Affiliates. The fair market value assessment of the System shall consider, among other things, the income and savings associated with the System for the remaining portion of the Contract Term, the terminal value of the assets and the System's past and projected performance. The Independent Appraiser shall make a determination of the Purchase Price within thirty (30) days of appointment (the "Price Determination"). Upon making the Price Determination, the Independent Appraiser shall provide a written notice thereof to both Seller and Purchaser, along with all supporting documentation detailing the method of calculation of the Purchase Price. Except in the event of fraud or manifest error, the Price Determination shall be a final and binding determination of the fair market value. If Purchaser wishes to exercise the Purchase Option following the Price Determination, it shall deliver an exercise notice to Seller within ten (10) days of receipt of the Price Determination (the "Exercise Period"). Any such exercise notice shall be irrevocable once delivered. If Purchaser does not exercise the Purchase Option during the Exercise Period, then the Price Determination shall be null and void, and Purchaser may not request a new determination of the Purchase Price until the next Purchase Option Date. Each Price Determination by an Independent Appraiser shall be at Purchaser's expense.

7.3 Terms and Date of System Purchase. Unless agreed to in writing, the Parties shall consummate the sale of the System to Purchaser no later than forty-five (45) days following Purchaser's exercise of the Purchase Option. On the effective date of such sale (the "Transfer Date") (a) Seller shall surrender and transfer to Purchaser all of Seller's right, title, and interest in and to the System and shall retain all liabilities, Environmental Attributes, Environmental Incentives, and profits arising from or relating to the System that arose prior to the Transfer Date; (b) Purchaser shall pay the Purchase Price to Seller in readily available funds, and shall assume all liabilities arising from or relating to the System as of and after the Transfer Date; (c) Purchaser shall pay all amounts due under this Agreement for Energy delivered hereunder; and (d) both the Seller and the Purchaser shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Purchaser, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the System to Purchaser. The purchase and sale of the System shall be on an "as-is, where-is" basis, and Seller shall not be required to make any warranties or representations with regard to the System, but Seller shall, to the extent reasonably possible, transfer or assign to Purchaser all manufacturer and third-party warranties with respect to the System or any part thereof. Purchaser shall pay all transaction and closing costs associated with exercise of the Purchase Option.

8. TITLE AND RISK OF LOSS.

8.1 Title. Seller shall at all times retain title to and be the legal and beneficial owner of the System, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part or fixture of the Premises. Seller may file one or more precautionary financing

statements in jurisdictions it deems appropriate with respect to the System in order to protect its rights in the System.

8.2 Risk of Loss. Seller shall bear the risk of loss for the System, except to the extent caused by the breach by Purchaser of its obligations under this Agreement, the Site Lease or the gross negligence or intentional misconduct of Purchaser or its invitees.

9. FORCE MAJEURE.

9.1 Force Majeure. To the extent either Party is prevented by an event of Force Majeure from performing its obligations under this Agreement, such Party shall be excused from the performance of its obligations under this Agreement, provided that:

- (a) The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion;
- (b) The non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure;
- (c) The suspension of performance is of no greater scope and of no longer duration than is required;
- (d) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing actions taken to end the Force Majeure;
- (e) when the non-performing Party is able to resume performance of its obligations under this Agreement that Party shall give the other Party written notice to that effect;
- (f) any milestone or date for performance under this Agreement affected by such Force Majeure shall be deemed to be extended on a day-for-day basis for the duration of the Force Majeure event or condition, and
- (g) Notwithstanding the foregoing, no Party may claim relief by reason of Force Majeure from a simple requirement to pay money due hereunder.

9.2 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless and to the extent that the delay in giving notice prejudices the other Party.

9.3 Limitations on Effect of Force Majeure. In no event will any delay or failure of performance caused by any conditions or events of Force Majeure extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty-five (365) days from its occurrence or inception, as noticed pursuant to Section 9.2, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty-five (365) day period, terminate this Agreement to the extent of the Force Majeure upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. In the event of a Force Majeure event that extends beyond such three hundred sixty-five (365) day period, the Parties may mutually agree to extend the period beyond three hundred sixty-five (365) days.

10. RIGHTS AND OBLIGATIONS OF PURCHASER.

10.1 Purchaser Access. To the extent authorized by this Agreement and any applicable Lease, Seller shall provide Purchaser with reasonable access to the System at all reasonable times with reasonable prior written notice, only for purposes of maintaining any equipment which is owned or otherwise the responsibility of Purchaser under this Agreement; provided, however, that Purchaser shall comply with Seller's written safety guidelines and risk management procedures, copies of which shall be provided to Purchaser by Seller upon request.

10.2 Site Lease. As of the Effective Date hereof, Purchaser and Seller have entered into an Site Lease for access to, on, over, under and across each of the Sites for the purposes of: (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (b) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to Purchaser's Electrical System at the Site and/or to the Utility's electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering a Site as may be required in accordance with the terms of the Lease. During the Term, Purchaser shall not interfere with Seller's rights under the Lease and shall take all commercially reasonable steps to prevent any third parties from interfering with such rights. Purchaser agrees that Seller, upon request to Purchaser, may record a memorandum of Lease in the land records respecting the Lease in form and substance reasonably acceptable to the Parties.

11. ADDITIONAL COVENANTS.

11.1 Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the System or any portion thereof. If Purchaser breaches its obligations under this Section 11.1, it shall promptly notify Seller in writing, shall promptly cause any lien to be discharged and released of record without cost to Seller, and shall, to the limited extent permissible under State of Michigan Law, indemnify Seller against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such lien.

11.2 Additional Purchaser Financial Information. If requested by Seller, Purchaser shall deliver within one hundred-eighty (180) days following the end of each fiscal year, a copy of Purchaser's annual report containing audited consolidated financial statements with footnotes for such fiscal year. In all cases such financial statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles consistently applied; provided, however, that if any such financial statements are not available on a timely basis due to a delay in preparation or certification, such delay shall not by itself constitute a Purchaser Event of Default so long as Purchaser diligently pursues the preparation, certification and delivery of the statements.

11.3 Performance Assurance; Downgrade Event. If at any time Seller, in its sole judgment, determines that Purchaser's or Purchaser's Performance Assurance provider's creditworthiness or performance under this Agreement has or will become unsatisfactory, or if Purchaser or Purchaser's Performance Assurance provider experiences a Downgrade Event, then Seller may by written notice require Purchaser to provide Performance Assurance within fifteen (15) Business Days. Purchaser shall obtain and maintain such Performance Assurance, unless otherwise agreed upon by Seller in writing.

11.4 Conditions Precedent. The Seller's obligations hereunder shall be subject to and conditional upon each of the following conditions being met to the Seller's satisfaction:

- (a) NTP as defined in the EPC Agreement shall have been issued.
- (b) Receipt of all necessary permits and approvals for construction and operation of the System, determination being at the sole discretion of the Seller.
- (c) Completion of contract negotiations with Utility on the interconnection design and approval.

12. REPRESENTATIONS AND WARRANTIES.

12.1 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that:

- (a) Purchaser has the requisite legal capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of all applicable governing authorities, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Purchaser;
- (b) This Agreement constitutes Purchaser's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and

other similar laws now or hereafter in effect relating to creditors' rights generally;

- (c) No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser;
- (d) No governmental approval (other than any governmental approvals which have been previously obtained) is required in connection with the due authorization, execution and delivery of this Agreement by Purchaser or the performance by Purchaser of its obligations hereunder which Purchaser will be unable to obtain in due course; and
- (e) The audited financial statements of Purchaser for the most recent three calendar years, together with any unaudited interim financial statements of Purchaser, (i) have each been prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein; and (ii) present fairly and accurately the financial condition of Purchaser as of the dates thereof and results of its operations for the periods covered thereby. Purchaser further represents and warrants to Seller that since the date of the most recent of the above-referenced financial statements, there has been no material adverse change in Purchaser's financial condition, business, operations or prospects.

12.2 Representations and Warranties of Seller. Seller represents and warrants to Purchaser that:

- (a) Seller has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Seller;
- (b) this Agreement constitutes Seller's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

- (c) No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Seller that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Seller; and
- (d) Neither the System nor any of Seller's services provided to Purchaser pursuant to this Agreement infringe on any third party's intellectual property or other proprietary rights.

13. DEFAULTS/REMEDIES.

13.1 Seller Event of Default. Each of the following events shall constitute a "Seller Event of Default":

- (a) Seller fails to pay to Purchaser any amount when due under this Agreement and such failure remains uncured for ten (10) Business Days following notice of such failure to Seller; or
- (b) Seller materially breaches any other term of this Agreement, and (i) if such breach is capable of being cured within thirty (30) days after Purchaser's notice to Seller of such breach and Seller has failed to cure the breach within such thirty (30) day period, or (ii) if Seller has diligently commenced work to cure such breach but that breach is not capable of cure within such thirty (30) day period, Seller has requested a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Purchaser's notice) to cure the breach, but Seller has failed to cure the breach.
- (c) Seller making a general assignment of its assets that is not in accordance with the terms of this Agreement (Excepting any general assignment for the benefit of creditors that is explicitly permitted by this Agreement);
- (d) Seller's dissolution, liquidation or filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or after the filing of a case in bankruptcy or any proceeding under any other insolvency law against the Seller, the Seller's failure to obtain a dismissal of such filing within sixty (60) calendar days after the date of such filing;
- (e) Any express representation or warranty of Seller set forth in Section 12.2 of this Agreement was false or misleading in any material respect when made, unless the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) calendar days after the Purchaser has given the Seller written notice thereof; provided, however, that if the fact, circumstance or condition that is the subject of

such representation or warranty cannot be corrected within thirty (30) calendar days; or if such fact circumstance or condition being otherwise than as first represented does not materially adversely affect the Purchaser, then Seller shall have additional time, but in any event not longer than ninety (90) days, to cure the default if it commences in good faith within such thirty (30) calendar day cure period to correct the fact, circumstance or condition that is the subject of such representation or warranty and it diligently and continuously proceeds with all due diligence to correct the fact, circumstance or condition that is the subject of such representation or warranty; or

- (f) A failure to maintain insurance required under this Agreement, which is not corrected within thirty (30) days;

13.2 Purchaser's Remedies. If a Seller Event of Default has occurred and is continuing, Purchaser may terminate this Agreement by written notice to Seller following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity, including, in the event such Seller Event of Default occurs and is continuing after the sixth (6th) anniversary of the Commercial Operation Date, exercising the Purchase Option.

13.3 Purchaser Event of Default. Each of the following events shall constitute a "Purchaser Event of Default":

- (a) Purchaser fails to pay to Seller any amount when due under this Agreement and such breach remains uncured for ten (10) Business Days following notice of such breach to Purchaser;
- (b) (i) Purchaser commences a voluntary case under any bankruptcy law or under analogous laws relating to municipal entity insolvency; (ii) Purchaser fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Purchaser in an involuntary case under any bankruptcy law; (iii) any involuntary bankruptcy proceeding commenced against Purchaser remains undismissed or undischarged for a period of sixty (60) days; or Purchaser becomes structurally insolvent such that it becomes generally unable to meet its financial obligations as and when they fall due;
- (c) Purchaser breaches any of its obligations under the Site Lease;
- (d) Purchaser breaches any of its obligations under Section 3.2;
- (e) Purchaser fails to secure the release of any lien imposed on the System in violation of Section 11.1 more than 15 days following notice thereof; or
- (f) Purchaser breaches any other material term of this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Purchaser, or such longer cure period as may be agreed to by the Parties.

13.4 Seller's Remedies. If a Purchaser Event of Default has occurred and is continuing, Seller may terminate this Agreement by written notice to Purchaser following the expiration of the applicable cure period. Seller may also exercise any other remedy it may have at law or equity, including recovering from Purchaser all resulting damages, inclusive of lost tax benefits and other incentives as well as any lost revenues from Purchaser (collectively, the "PPA Damages"). Notwithstanding any provision in this Agreement to the contrary, if no notice of dispute has been issued within ninety (90 days) in the case of a billing dispute or thirty-six (36) months in all other cases after the Seller learns of the Dispute (the "Claims Period"), the Dispute and all claims related thereto shall be deemed waived and the Seller shall thereafter be barred from proceeding thereon. For purposes of this Section, "the Seller learns of the Dispute" when, as to any particular Dispute, it has actual knowledge of the occurrence giving rise to the Dispute and a reasonable belief that the Purchaser is at least partially responsible for any damages arising from that occurrence. Any claim reasonably arising out of a claim for which notice of a dispute was timely provided shall not be deemed to be waived if "the Seller learns of the Dispute," or a previously undiscovered but related liability, at a later date unless the Seller fails to raise the claim within the then reestablished Claims Period.

13.5 Waiver of Consequential Damages. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PPA DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

13.6 Limitation of Liability. TO THE EXTENT PERMITTED BY LAW, SELLER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED THE AMOUNT OF THE AGGREGATE PAYMENTS MADE AND, AS APPLICABLE, PROJECTED TO BE MADE (TAKING INTO ACCOUNT ANY EXPECTED TERMINATION) BY PURCHASER UNDER THIS AGREEMENT.

14. FINANCING ACCOMMODATIONS.

14.1 Purchaser Acknowledgment. Purchaser acknowledges that Seller may finance the System and that Seller's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate any such financing, with respect to which Seller has notified Purchaser in writing of the identity of such person's offering to provide such financing (each, a "Financing Party"), Purchaser agrees as follows:

14.2 Consent to Collateral Assignment. Seller shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Purchaser hereby consents to the collateral assignment by Seller to any Financing Party of Seller's right, title, and interest in and to this Agreement.

14.3 Financing Party's Rights Following Default. Notwithstanding any contrary term of this Agreement:

- (a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.
- (b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Seller hereunder or cause to be cured any default or event of default of Seller in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Seller (unless Financing Party has succeeded to Seller's interests) to perform any act, duty, or obligation of Seller, but Purchaser hereby gives Financing Party the option to do so.
- (c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Financing Party, Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Seller Event of Default.
- (d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new power purchase agreement with Financing Party or its assignee on substantially the same terms as this Agreement.

14.4 Financing Party Cure Rights. Purchaser shall not exercise any right to terminate or suspend this Agreement unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser's and Seller's obligations under this Agreement shall otherwise remain

in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

14.5 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Seller's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 14.4, then this Agreement shall continue in full force and effect.

14.6 Notice of Defaults and Events of Default. Purchaser agrees to deliver to each Financing Party a copy of all notices that Purchaser delivers to Seller pursuant to this Agreement.

15. NOTICES. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier and shall be deemed effective upon receipt.

To Seller:

New Energy Equity, LLC
2530 Riva Road, Suite 200
Annapolis, Maryland 21401
Attention: Matthew Hankey, President and CEO
Phone: 443-267-5012
Email: mhankey@newenergyequity.com

To Purchaser:

City of Muskegon
933 Terrace Street
Muskegon, MI 49440
Attention: Frank Peterson, City Manager
Phone: 231-724-6724
Email: Frank.Peterson@shorelinecity.com

16. GOVERNING LAW; DISPUTES.

16.1 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Michigan, without regard to the conflicts of law principles thereof.

16.2 Disputes.

- (a) Management Negotiations. In the event of any dispute arising under this Agreement (a "Dispute"), within seven (7) days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall confer and then meet in person at the primary administrative offices of the Purchaser within fourteen (14) days of delivery of the Dispute Notice if the dispute is not settled prior to that time. The Parties' Representatives shall meet to negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively with the specific goal of reconciling differences and allowing the Parties to continue in this Agreement for the mutual benefit of both Parties. In the event the Parties' Representatives cannot resolve the Dispute within fourteen (14) days after delivery of the

Dispute Notice, within fourteen (14) days following any request by either Party at any time thereafter, each Party Representative (I) shall independently prepare a written summary of the Dispute describing the issues and claims, (II) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (III) shall submit a copy of both summaries to a senior officer of the Party Representative with authority to irrevocably bind the Party to a resolution of the Dispute, subject to approval by Purchaser's Board of Education. The senior officers for both Parties shall negotiate in good faith to resolve the Dispute, subject to any required internal approval of any such resolution by the Parties' respective senior management or Board of Education. If the Parties have acted in good faith and not resolved the Dispute within ninety (90) days after delivery of the Dispute Notice, either Party may seek legal and equitable remedies. During the pendency of the Parties' attempt to resolve the dispute described in a Dispute Notice, any applicable limitations period, whether by contract or statute, shall be tolled. Seller will not be liable for any damages, including liquidated damages that accrue from the time the Parties reach an agreement to the date of Board of Education action. Nothing in this Agreement shall prevent either Party from pursuing judicial proceedings if (a) good faith efforts to resolve a dispute under these procedures have been unsuccessful, or (b) interim resort to a court of competent jurisdiction is necessary to prevent serious and irreparable injury to a Party or to others.

- (b) Jurisdiction and Venue. Should management negotiations fail to resolve any dispute, any Party may initiate dispute resolution proceedings in any state or federal court in the State of Michigan. Each Party agrees to submit to the personal and subject matter jurisdiction of any such court and to waive any challenge it may have to the laying of venue in such location by reason of inconvenient forum or otherwise.

17. INDEMNIFICATION.

17.1 Seller's Indemnity to Purchaser. Seller shall indemnify, defend, and hold harmless Purchaser (including Purchaser's permitted successors and assigns) and Purchaser's directors, officers, affiliates, employees, and agents (collectively, "Purchaser Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Purchaser Indemnified Parties arising from or relating to (i) Seller's breach of this Agreement, or (ii) Seller's gross negligence or willful misconduct. Seller's indemnification obligations under this Section 17.1 shall be subject to the limitations of Section 17.5, below.

17.2 Purchaser's Indemnity to Seller. To the limited extent permissible under Michigan law, Purchaser shall indemnify, defend, and hold harmless Seller (including Seller's permitted successors and assigns) and directors, officers, affiliates, members, shareholders, employees and agents (collectively, "Seller Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Seller Indemnified Parties arising from or relating to (i) Purchaser's breach of this Agreement, or

(ii) Purchaser's gross negligence or willful misconduct. Purchaser's indemnification obligations under this Section 17.2 shall be subject to the limitations of Section 17.5, below. Nothing herein shall be construed as a waiver of the defense of Governmental Immunity or a waiver of statutory or constitutional limitations on governmental indemnity.

17.3 Notice of Claims. Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the "Indemnifying Party") a written notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a "Claim Notice"). Such Claim Notice shall be delivered promptly to the indemnifying Party that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice shall not relieve the Indemnifying Party of its obligations under this Article 18, except to the extent that such Indemnifying Party has been prejudiced by such failure.

17.4 Defense of Action. If requested by the Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party reasonably believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Article 17 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

17.5 Percentage Share of Negligence. It is the intent of the Parties hereto that where fault, acts or omissions are determined to be contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party's negligence, acts or omissions.

18. INSURANCE.

18.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Contract Term, with insurers of recognized responsibility authorized to do business in the State in which the System will be located, assigned an A.M. Best rating of no less than A IX, insurance coverage in the amounts and types set forth on Exhibit E. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

18.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

18.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

18.4 Certificates of Insurance. Each Party shall provide the other Party with certificates of insurance evidencing coverage within ten (10) days of the effective date of this Agreement and at any time thereafter with thirty (30) days' notice.

19. MISCELLANEOUS.

19.1 Confidential Information. To the extent permitted by law, if either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential information, except in the negotiation and performance of this Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its, officers, directors, members, managers, employees, agents, contactors and consultants (collectively, "Representatives"), and Affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and/or performance of this Agreement. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 20.1 except as set forth in Section 20.2. All Confidential information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

19.2 Permitted Disclosure. Notwithstanding any other provision in this Agreement, neither Party shall not be required to hold confidential any information that (a) becomes publicly available other than through the receiving Party, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (c) is independently developed by the receiving Party, (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality, or (e) is required to be disclosed to comply with applicable law, subpoena or court order. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure. Seller acknowledges that

Purchaser, as a public entity is subject to the Freedom of Information Act. As such, Purchaser's compliance with the Freedom of Information Act shall not be construed as a breach of any kind of this Agreement. If Seller does, or believes it is obligated to, disclose information to comply with the Freedom of information Act, Seller shall have the right to challenge or dispute the disclosure in a court of competent jurisdiction at no cost to Purchaser. Further, nothing contained herein shall be construed as the Purchaser intent or willingness to violate the Freedom of Information Act.

19.3 Taxes

- (a) **Tax Structure or Treatment.** Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality of this Agreement (or any successor provision) of the Treasury Regulations promulgated under Section 601I of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.
- (b) **Seller Responsibility.** If, for any reason not addressed in this Agreement, Seller does not receive Tax Credits for any period, Purchaser's payments under this Agreement shall not be affected, and the risk of not obtaining the Tax Credits shall be borne solely by Seller.
- (c) **Purchaser Responsibility.** To the extent required by law, any tax applicable to Purchaser for the sale of electricity, attributes, or capacity charges shall be the responsibility of the Purchaser.

19.4 Assignment and Subcontracting.

- (a) **Assignment.** Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Seller may assign any of its rights, duties, or obligations under this Agreement, without the consent of Purchaser, (i) to any of its Affiliates, (ii) to any Financing Party on a collateral basis or (iii) to any qualified purchaser of the System. A person shall be deemed a "qualified purchaser" for such purposes if it can be shown to have credit at least as strong as Seller and experience with solar energy projects at least as deep as Seller. Any assignment of this Agreement, excepting assignment to any Financing Party on a collateral basis, shall include:

(i) An explicit assumption of all existing and future obligations of the Transferor to be performed under this Agreement;

(ii) An explicit assumption of all existing and future obligations of the Transferor to be performed under the Site Lease, and

(b) Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Purchaser, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder and Seller ensures that the subcontractors has adequate relevant experience and maintains the same insurances Seller is required to carry herein or is covered by the Seller's insurance policies. Purchaser may reject or remove any subcontractor based on such subcontractors conduct at the facility.

19.5 Entire Agreement. This Agreement and the Site Lease represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

19.6 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

19.7 Binding Effect. This Agreement, as it may be amended from time to time, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

19.8 No Partnership or Joint Venture. Seller and Seller's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Purchaser. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

19.9 Disclaimer of Third-Party Beneficiary Rights. In executing this Agreement, Purchaser does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement. Except with respect to Financing Party rights per this Agreement, no provision of this Agreement is intended to, nor shall it in any way, inure to the benefit of any other Person not a Party hereto, so as to constitute such Person as a third party beneficiary under this Agreement.

19.10 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Purchaser may be subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as to a subcontractor to Purchaser. All applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including but not limited to 41 C.F.R. §60-1.a(a)(1-7), 60-250.4 and 60-74L.4, if applicable.

19.11 Nondiscrimination. Seller shall not discriminate against an employee or applicant for employment for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, creed, religion, national origin, sex, disability, age, height weight, veteran status, marital status, or any other reason prohibited by law. A breach of this covenant shall be considered a material breach of contract. This provision is required in accordance with MCL 37.2209.

19.12 Iran Economic Sanctions Act. Pursuant to Michigan Public Act No. 517 of 2012 (the "Iran Economic Sanctions Act") Seller certifies and warrants that it is not an "Iran linked business" within the meaning of the Iran Economic Sanctions Act and will not become an "Iran linked business" at any time during the course of performing the work or services under the contract. Seller further acknowledges and understands that it is required as a matter of law to execute and notarize a separate certification to the same. Submitting a false certification will submit Seller to a civil penalty of not more than \$250,000.00 or two (2) times the amount of the contract for which the false certification was made, whichever is greater, the cost of the Purchaser's investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person submitting a false certification shall be ineligible to perform work or services for Purchaser for three (3) years from the date it is determined that the person submitted the false certification.

19.13 Headings; Exhibits. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporate by reference herein.

19.14 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for reasonable attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

19.15 Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. Any such waiver must be in a writing executed by the Party making such waiver.

19.16 Severability. If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

19.17 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable Statute of Limitations, including without limitation warranties, remedies, or indemnities which obligation shall survive for the period of the applicable statute(s) of limitation.

19.18 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Seller to dedicate the System to public use or subject itself to regulation as a “public utility” (as such term may be defined under any applicable law).

19.19 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Purchaser of energy produced at an alternative energy facility.

19.20 Forward Contract. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

19.21 Publicity. The Parties agree that each may, from time to time, issue press releases regarding the System, provided, however that neither Party shall issue a press release regarding the System without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Parties shall cooperate with each other in connection with the issuance of such press releases. Purchaser shall not make claims of using solar energy at the Premises. Purchaser may publicize that it is serving as a host for the System and display photographs of the System in its advertising and promotional materials, provided that such materials shall identify Seller as the owner and developer of the System and shall be consistent with Section 2.3.

19.22 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“.PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

19.23 Further Assurances.

- (a) Additional Documents. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.
- (b) Certificates. From time to time, Purchaser shall provide within five (5) Business Days after receipt of a written request from Seller an estoppel certificate attesting, to the knowledge of Purchaser, to Seller’s compliance with the terms of this Agreement or detailing any known issues of

noncompliance, and making such other representations, warranties, and accommodations reasonably requested by the recipient of the estoppel certificate.

- (c) Opinion. Upon the receipt of a written request from Seller, Purchaser shall deliver an opinion of counsel, in form and substance satisfactory to Seller, confirming the enforceability of this Agreement against Purchaser.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Power Purchase Agreement to be duly executed and delivered as of the Effective Date.

SELLER

New Energy Equity LLC

By: _____
Name: Matthew Hankey
Title: President

PURCHASER

City of Muskegon

By: _____
Name: Frank Peterson
Title: City Manager

EXHIBIT A

DEFINITIONS

“Affiliate” means, with respect to any person or entity, any other person or entity controlling, controlled by or under common control with such first person or entity. For purposes of this definition and this Agreement, the term “control” (and correlative terms) means the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or profits of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

“Agreement” has the meaning set forth in the Preamble.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Commercial Operation Date” means the date when the System is “placed in service” for purposes of Section 48 of the Internal Revenue Code.

“Confidential Information” has the meaning set forth in Section 19.1.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means the twelve (12) month period commencing on the Commercial Operation Date, and each consecutive twelve (12) month period thereafter during the Contract Term.

“Delivery Point” means the point of interconnection between the System and the Premises’ internal electrical system.

“Downgrade Event” means Purchaser at any time (a) if rated by one of the following rating agencies, is rated less than (i) Baa3 by Moody’s Investors Service, Inc. (or its successor), or (ii) BBB- by Standard and Poor’s Rating Services, a division of McGraw-Hill (or its successor), or (iii) “investment grade” by any other nationally recognized rating agency, or (b) fails to maintain Performance Assurance.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” means electrical energy that is generated by the System, expressed in kWh.

“Energy Output” means the Energy generated by, or attributable to, a System and measured at the applicable Point of Delivery, as alternating current in whole kilowatt-hours (kW_r). For the avoidance of doubt the Energy Output does not include RECs, Other Credits or Tax Credits.

“Energy Price” means, for any Contract Year, the applicable amount set forth on Exhibit D.

“Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to energy generation by a renewable fuel source and its displacement of energy generation by conventional, nonrenewable, and/or carbon-based fuel sources. Environmental Attributes include, but are not limited to, (1) any benefit accruing from the renewable nature of the generation’s motive source; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants other than those that are regulated pursuant to state or federal law); (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (4) any property rights that may exist with respect to the foregoing attributes howsoever entitled; (5) any green tags, renewable energy credits or similar credits, including RECs created pursuant to applicable law (“RECs”); and (6) any reporting rights to these avoided emissions, including, but not limited to, green tag or REC reporting rights. Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes, (ii) Environmental Incentives, or (iii) emission reduction credits encumbered or used for compliance with local, state, or federal operating and/or air quality permits.

“Environmental Incentives” means any and all financial incentives, from whatever source, related to the construction, ownership, or operation of the System. Environmental Incentives include, but are not limited to, (i) federal, state, or local tax credits; (ii) any other financial incentives in the form of credits, reductions, or allowances that are applicable to a local, state, or federal income taxation obligation; and (iii) other grants, rebates, or subsidies, including utility incentive programs. Environmental Incentives do not include Environmental Attributes.

“Estimated Production” has the meaning set forth in Section 2.1.3.

“Exercise Period” has the meaning set forth in Section 5.2.

“Financing Party” has the meaning set forth in Section 14.1.

“Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, which includes, without limitation, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood, volcanic eruption or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure, nor does the regular exercise of regulatory discretion by a Governmental Authority or the Utility.

“Governmental Authorities” means any national, state, regional, municipal or local government, any political subdivision thereof, or any governmental, quasi-governmental, regulatory, judicial or administrative agency, authority, commission, board or similar entity having jurisdiction over the System or its operations, the Premises or otherwise over any Party.

“Host” has the meaning set forth in the Preamble.

“Independent Appraiser” has the meaning set forth in Section 7.2.

“Interest Rate” means an annual rate equal to the lesser of (a) twelve (12) percent and (b) the highest interest rate permitted by applicable law.

“kWh” means kilowatt-hours.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit issued by either a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s, in a form acceptable to Seller.

“Net Metering Credits” means the credits applied to Purchaser’s bill by the Utility, if any, in respect of Energy produced by the System and allocated to Purchaser under this Agreement.

“Net Metering Rules” means the rules established pursuant to Michigan law and regulation as well as applicable utility rules.

“Notice to Proceed Date” means the date on which physical work of a significant nature relating to the installation of the System on the Premises commences.

“Party” and “Parties” have the meanings set forth in the Preamble.

“Performance Assurance” means collateral in an amount as reasonably determined by Seller and in a form (e.g., cash, Letter(s) of Credit, guaranty, or other security or credit assurance) reasonably acceptable to Seller.

“Person” means any individual, corporation (including, without limitation, any non-stock or non-profit corporation), limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or governmental body.

“Point of Delivery” means, at any given Site, the physical points at which electrical interconnection are made between the System and the Purchaser's Electrical Systems.

“PPA Damages” has the meaning set forth in Section 13.4.

“Premises” means the leased real property under the Site Lease, located at: Mercy Health Arena – 470 W. Western, Muskegon, MI 49440

“Price Determination” has the meaning set forth in Section 7.2.

“Prudent Operating Practice” means the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric power industry for solar energy facilities of similar size, type, and design as the System that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with applicable law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

“Purchase Option” has the meaning set forth in Section 7.1.

“Purchase Price” has the meaning set forth in Section 7.2.

“Purchase Option Dates” has the meaning set forth in Section 7.1.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Event of Default” has the meaning set forth in Section 13.3.

“Purchaser Indemnified Parties” has the meaning set forth in Section 17.1.

“Seller” has the meaning set forth in the Preamble.

“Seller Event of Default” has the meaning set forth in Section 13.1.

“Seller Indemnified Parties” has the meaning set forth in Section 17.2.

“Site Lease” has the meaning set forth in the Recitals.

“System” means the solar energy generating system described in Exhibit B.

“Transfer Date” has the meaning set forth in Section 8.3.

“Utility” means Consumers Energy.

EXHIBIT B

DESCRIPTION OF THE SYSTEM

Description of Site:

The real property known as Mercy Health Arena located at 470 W. Western, Muskegon, MI 49440.

Description of System:

Equipment Name And Location	Manufacturer/ Model #	Specifications	Description
Mercy Health Arena 470 W. Western Muskegon, MI 49440	Modules:1,152/Hanwha Q Cells 390W Inverters: 4/ SE 100kW Racking: Aerocompact	449.28kW DC	• Ballasted Roof mount system

EXHIBIT C

ESTIMATE SYSTEM PRODUCTION

*Note: these values are estimates only and actual production may vary. Seller does not guarantee any level of actual production.

SYSTEM PERFORMANCE	
Year	Solar (kWh)
1	529,830
2	527,287
3	524,756
4	522,237
5	519,730
6	517,236
7	514,753
8	512,282
9	509,823
10	507,376
11	504,941
12	502,517
13	500,105
14	497,704
15	495,315
16	492,938
17	490,572
18	488,217
19	485,874
20	483,541
21	481,220
22	478,910
23	476,612
24	474,324
25	472,047

EXHIBIT D

ENERGY PRICE

Commencing on the Commercial Operation Date of the System, the price for the Energy Output produced and delivered by the System in the first year following the applicable Commercial Operation Date shall not exceed \$0.1220/kWh and such amount shall increase each subsequent year as follows:

<i>Contract Year</i>	<i>Energy Price (\$/kWh)</i>
1	0.1220
2	0.1244
3	0.1269
4	0.1295
5	0.1321
6	0.1347
7	0.1374
8	0.1401
9	0.1429
10	0.1458
11	0.1487
12	0.1517
13	0.1547
14	0.1578
15	0.1610
16	0.1642
17	0.1675
18	0.1708
19	0.1742
20	0.1777
21	0.1813
22	0.1849
23	0.1886
24	0.1924
25	0.1962

EXHIBIT E

INSURANCE REQUIREMENTS

(a) Seller shall, at its sole cost and expense obtain and maintain for the duration of this Agreement, the following insurance policies:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Commercial general liability insurance against liability for injury to or death of any Person, contractual liability, or damage to property in connection with the construction, use, operation or condition of the System of not less than \$2,000,000 combined single limit per occurrence. Purchaser shall be named as an additional insured under this liability insurance;, provided however that Seller shall in no event be obligated to repair or replace Purchaser's buildings or Premises;

(iv) Automobile liability insurance that complies with the requirements of the Michigan No fault law with residual liability limit of at least \$2,000,000 combined single limit for bodily injury and property damage. There shall be coverage for owned, hired, and non-owned vehicles.

(v) "Completed value" Builder's risk insurance with a limit of at least 100% of the total aggregate value for the System's construction.

(vi) Excess or umbrella liability insurance with a limit of at least \$2,000,000.

(vii) Customary property insurance in the amount of the full replacement value of the equipment constituting the System and any other improvements installed on the Site by Seller.

(viii) Seller may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(ix) Seller may elect to self-insure any or all of the insurance requirements contained in this Agreement, with the approval of Purchaser. In such event, Seller shall submit to Purchaser a Certificate of Self-Insurance, including evidence of financial responsibility.

Seller shall name "the City of Muskegon", its employees, Board Members, and officers as additional insureds on all liability coverage other than workers compensation. The coverage granted to the Purchaser as an additional insured shall apply on a primary basis. The Purchaser's coverage shall be excess. Deductibles and retentions shall be clearly stated on any certificate of insurance and shall be the responsibility of the respective party. Unless otherwise provided herein, all insurance coverage is to be on an occurrence basis rather than claims made basis.

Upon request of Purchaser, Seller shall furnish a current certificate or certificates of insurance for the insurance then in place evidencing the existence of the required coverage and stating that Purchaser will be notified in writing thirty (30) days prior to cancellation, material change or non-renewal of such insurance.

Seller shall cause the insurance policies obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Purchaser in connection with any damage covered by any policy. To the extent permitted by law, neither Party shall be liable to the other for any damage exceeding applicable policy limits that are caused by fire or any of the risks insured against under the property insurance policy required by this Agreement or that would have been covered by the property insurance policy required to be carried under this Agreement.

Seller hereby releases Purchaser, its trustees, officers, agents, representatives, officers, employees and contractors, from any claims for damage to any person or to the Premises and other improvements located on the Premises, to the fixtures, personal property, Seller's improvements, and alterations of Seller in or on the Premises and the improvements located on the Premises that are caused by or result from risks insured against under any insurance policies carried by Seller under this Agreement, or that would have been covered by any insurance policy required to be carried under this Agreement.

(b) Purchaser shall obtain and maintain the following insurance policies:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Commercial general liability insurance or its equivalent against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Seller shall be named as an additional insured under this liability insurance; provided, however, that Purchaser shall in no event be obligated to repair or replace Seller's equipment, buildings, or Premises;

(iv) Purchaser may satisfy the insurance requirements contained in this Agreement through any combination of primary and/or excess coverage; and

(v) Purchaser may elect to self-insure any or all of the insurance requirements contained in this Agreement.

Muskegon Combined Arena-Annex

449.3 kW Solar project



Investment

Total Project \$ 899,067

Customer Contribution \$ - Building integrated cost into solar system

Savings

Annual total Electric bill (without solar)

Cost of electricity offset by solar

Power Purchase from solar

Annual saving from solar

2020 \$ 59,727 \$ 0.1163 \$ 0.1220 /kWh
3.2% 2.0% Annual Index

2021	\$	61,638	\$	64,639	\$	-
2022	\$	63,305	\$	65,616	\$	-
2023	\$	65,017	\$	66,607	\$	-
2024	\$	66,776	\$	67,613	\$	-
2025	\$	68,582	\$	68,634	\$	-
2026	\$	70,437	\$	69,671	\$	766
2027	\$	72,342	\$	70,723	\$	1,619
2028	\$	74,299	\$	71,791	\$	2,507
2029	\$	76,308	\$	72,875	\$	3,433
2030	\$	78,372	\$	73,976	\$	4,396
2031	\$	80,492	\$	75,093	\$	5,398
2032	\$	82,669	\$	76,228	\$	6,441
2033	\$	84,904	\$	77,379	\$	7,525
2034	\$	87,201	\$	78,548	\$	8,653
2035	\$	89,559	\$	79,734	\$	9,825
2036	\$	91,982	\$	80,938	\$	11,043
2037	\$	94,469	\$	82,161	\$	12,308
2038	\$	97,024	\$	83,402	\$	13,623
2039	\$	99,649	\$	84,662	\$	14,987
2040	\$	102,344	\$	85,940	\$	16,403
2041	\$	105,112	\$	87,238	\$	17,873
2042	\$	107,955	\$	88,556	\$	19,399
2043	\$	110,874	\$	89,894	\$	20,981
2044	\$	113,873	\$	91,251	\$	22,622
2045	\$	116,953	\$	92,630	\$	24,323

\$ 224,127 25 year savings

Chart House insures no annual energy loss.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: June 8, 2021	Title: Request for Proposal Approvals
Submitted By: Oneata Bailey	Department: Community and Neighborhood Services
Brief Summary: There is a request of proposal from sub-recipients to provide funds to <i>Youth Empowerment Project</i> (YEP) for work and educational experiences throughout the year. (Applications attached)	
Detailed Summary: Bethany Housing Ministries dba Community enCompass: YEP Program -\$ 20,000.00	
Amount Requested: \$ 20,000.00	Amount Budgeted: \$ 20,000.00
Fund(s) or Account(s): CDBG	Fund(s) or Account(s): 2019
Recommended Motion: To approve the Agreements with Bethany Housing Ministries dba Community enCompass.	
Check if the following Departments need to approve the item first: Police Dept. ☐ Fire Dept. ☐ IT Dept. ☐ For City Clerk Use Only: Commission Action:	

**CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICERS
CERTIFICATION
RESPONDENT IDENTIFICATION**

Bethany Housing Ministries dba Community enCompass
Full Legal Name of Agency

231-728-3117
Telephone Number

1105 Terrace, Muskegon, MI 49442
Legal Mailing Address of Agency

1143931330
DUNS #

Youth Empowerment Project
Project Title

Virginia Taylor
Contact Person

Bethany Housing Director
Title

231-728-3117
Telephone

virginia@communityencompass.org
E-mail Address of Contact

4/6/2021
Submission Date

**CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICERS
PROGRAM SUMMARY**

1. Service Mix: Indicate the mix or type of services to be provided.

Year Round Youth Program

2. Total Project Costs:

CDBG Funds	\$ <u>20,000</u>
Other Funds	\$ <u>81,833</u>
Total Funds	\$ <u>101,833</u>

3. Funding Sources: List below other funding sources and amounts of funds for this project.

CCHD	\$7,000
Gerber Foundation	\$5,000
Looking Out Foundation	\$3,000
Barnabas Foundation	\$5,000
Nelson Neighborhood Assoc	\$2,500
Lawncare Contract City	\$16,000
Contributions	\$17,233
Michigan Works in-Kind	\$19,000

4. Project Service Area: List below the geographic areas (see map) the agency intends to serve through this project. In the event this project includes capital improvements, please indicate its location on the current City area map, estimated number of persons and indicate percent of service rendered and the area denoted by numbers on map.

The project serves high school youth living in the City of Muskegon.

5. Estimate the number and percent of lower income persons served by this project. Please specify by income category and household size. Following provides income categories and household size. Income category: extremely low (0-30% AMI), very low (31-50% AMI), low (51-80% AMI), and Household size: elderly household, single household, small family 2-4, large family 5 or more. If this question is not applicable to your organization/agency please specify. (see attached income guidelines)

100% of High School and Elementary Students served by the project are very low income (71 Students total) The Household sizes vary from small to large families.

6. Please provide your agency's most recent annual budget and audit if applicable.

Attached

**CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICES
PROGRAM NARRATIVE**

General Instructions: Please respond to the following questions about the agency's program design. (Limit the narrative to three typewritten pages plus attachments).

1. Describe how the proposed project will meet the needs of Muskegon residents without duplicating services.

The students who participate in the YEP program are primarily African American youth living in poverty in downtown Muskegon. This past year has been extremely hard for many of them, given the elimination of so much that has been normal to their daily lives and structure. While the YEPs had to move their weekly meetings to a virtual platform, one of the things that remained consistent for the YEPs in 2020 was the Summer Work Experience which employed 19 youth in outdoor activities in the core city neighborhoods, allowing for safe, socially distant work environments where youth were able to earn some money, learn new skills, and participate in the building (and rebuilding of their neighborhoods).

A good job is the foundation of economic security and a social influencer of health. With poverty rates exceeding 15 percent in Muskegon, ensuring youth have access to early work experiences should be a priority. A disproportionate number of African American youth are living in poverty in our core city neighborhoods and lack the opportunities provided to their white counterparts in more affluent neighborhoods. The Department of Labor reports that more than two-thirds of younger workers are white youth from higher-income households, and that 41 percent of white youth who want to work find employment compared to 24 percent of youth of color. While low-income youth of all racial and ethnic groups are less likely to be employed low-income white youth were 7 percent more likely to be employed than higher-income black youth. The impact of this disparity has long-term outcomes. Youth who do not have stable jobs by their early twenties are at greater risk for joblessness, permanently lower earnings, and poorer health.

On the other hand, youth with work experiences will earn an annual income 22 percent higher than their counterparts who did not work. The promise of early work experiences has higher stakes for people of color who are more likely to experience negative life outcomes due to disparities. Early work experience is a pathway to economic opportunity and mobility; expands career options, increases lifetime wages; improves academic outcomes, improves soft skills, reduces justice system involvement, improves health; and strengthens the workforce. This suggests a need to target early work opportunities toward low-income youth of color whose prospects for socioeconomic mobility are severely limited and who are at greater risk for negative, long-term outcomes. These students are impacted the most from the immediate and longer-term positive benefits of early work experiences. In addition to work experience, they need leadership development opportunities. African American youth in our neighborhoods have felt stigmatized on the basis of race, income, and age. They don't feel like they matter or that their voices are heard. They don't have the knowledge or the connections to engage in a positive way in their community and often feel disenfranchised and unconnected.

We employ a strategy that focuses on providing quality youth development in five core competencies: Working, Learning, Thriving, Connecting, and Leading. These competencies are built through weekly leadership development, summer work experience, and arts/cultural activities.

Leadership Development: YEP is not just a “safe place” for teens to be during their most vulnerable out of school hours, but a structured and purposeful program. Research on youth leadership development underscores the importance of helping youth develop the skills and competencies they need to succeed. Because youth have great potential to be great connectors and leaders in their communities, leadership development benefits the individual teen and the community they live in. Cultivating leadership skills, showcasing their talents, and empowering them to contribute positively to their community can also shift community-wide perceptions about youth and promote a culture in which they are valued, contributing members of the community. YEP meet year-round to engage in leadership development.

Early Work Experience: We employ, train, and mentor 21 YEP throughout the summer. With work experience, they learn fundamental soft skills like communication and customer service, which employers are looking for when making hiring decisions, in addition to developing marketable job skills in the following areas.

Camp Counselors Work Experiences

YEP serve as Counselors in our Summer Day Camp called C.A.T.C.H. Camp. An outdoor summer day-camp for K-6th graders, which runs 4 days a week for 8 weeks of the summer. Campers take a field trip outside of Muskegon to places such as Silver Lake Sand Dunes, Grand Rapids Children’s Museum, Camp Pendalouan, MI’s Adventure, etc. Registration for Camp happens on Father’s Day, with a big food and fun event at the neighborhood park. This event regularly engages 200 neighbors and registers over 100 kids for Camp. Due to COVID, the numbers are scaled back this summer to allow for social distancing.

Bethany Housing Construction/Rehab Work Experiences - YEP learn home construction and rehab skills in our Bethany Housing Program which produces, preserves, and protects affordable housing in downtown Muskegon neighborhoods. By providing this experience, we have an opportunity to change the mis-perception among young people that they need an expensive 4-year degree to have a lucrative career in a high demand field. Construction is also a tangible way for YEP to see the difference they can make in their neighborhood and even in their own homes.

Farming at McLaughlin Grows Work Experiences – YEP learn about urban farming, sell produce at the market, and provide leadership for the 110+ children and adults who volunteer on the farm. The agriculture industry is an important component of the West Michigan economy. Employers say there is a shrinking supply of suitable talent and entry-level candidates with the soft skills to fill positions needed in this growing industry.

Neighborhood Beautification Work Experiences - And finally YEP keep vacant lots in our neighborhood clean and mowed while learning the lawn care business. We collaborate with the Nelson Neighborhood Improvement Association and the City of Muskegon to maintain vacant lots owned by the City throughout the neighborhood. Lawn care is also an in demand job in West Michigan with above average job growth expected over the next 10 years.

Arts & Culture: YEP experience the arts and culture. Especially this past year when social distancing and the COVID epidemic forced us to rethink how we operate and build connections with one another, the Mural the YEP created with a local muralist (extending the length of the Sacred Suds building—50 feet long and 10 feet high), allowed them to express their feelings, connect with one another and the community, and create a lasting work of public art for neighbors to enjoy. Not to mention, giving our Sacred Suds Community Center a much-needed exterior makeover. This Summer YEP will have a unique opportunity to work with a world-

renowned artist, Hubert Massey, commissioned by the City of Muskegon to create a Mural on the new convention center/arena downtown in partnerships with the Community Foundation, Muskegon Heritage Museum, the James Jackson Museum of African American History. This project provides opportunity to engage youth in the two communities of our urban core, Muskegon and Muskegon Heights with neighbors and retirees from the iconic industries of Muskegon. Hubert Massey's philosophy and approach to design and implementation begins with and emphasizes engaging the community. Massey's goal is to create a work of art that reflects the story of Muskegon as told by its residents. He and the YEPs facilitated three forums and invited members of the community and representatives of local organizations and institutions to share with him their memories and experiences working in the most iconic industries of Muskegon. He listened to community members' hopes for the future of this community – and their ideas for the most expressive and appropriate image or images representing the rich history of this community. Our YEP participated in these conversations and will be collaborating with students from Muskegon Heights, who more commonly see themselves as rivals, to work together in the development of the mural. The final product will be completed in late September, and will cover an 80 ft. by 20 ft. area on the front of the Mercy Health Arena, on Western Ave. The public nature of this location as a “destination” in Muskegon County will be affirming to the YEPs, as they continue to elevate their voice in this City.

2. Describe how the proposed project will help Muskegon residents prevent, prepare for, or respond to the COVID-19 pandemic.

Youth faced many challenges because of COVID: change in routines; break in continuity of learning; break in continuity of health care, missed significant life events, and loss of security and safety. It is more important than ever to provide teens with opportunity to stay socially connected. The YEP programs response to the pandemic is to engage youth in activities that will keep them connected and provide opportunities for growth.

3. Describe the relationship of this project to the City's overall comprehensive neighborhood revitalization and community development efforts.

This project aligns with the following City Objectives: Reduction in the isolation of income group within the community by increasing diversity and vitality of neighborhoods; Youth Groups/Recreation Programs; and Economic Development.

4. Define how the proposed service and mix will be delivered. Detail the mode of service delivery i.e., months of operation, daily hours, intake system, transportation plans, outreach and referral mechanism, contingency or backup plans to assure service availability at all time, etc.

Youth are recruited and apply for the program starting in May. Youth are interviewed and accepted into the program based on the interview. They are referred from Michigan Works, other teens, parents, and schools. Youth are engaged in leadership development and Arts and Culture activities one day a week year-round. During the Summer youth are engaged in Early Work experiences Monday, Tuesday, Wednesday and Thursday for 8 weeks, beginning the second week of June through the middle of August. Transportation is provided for Leadership Development and youth are provided a bike for Summer Work Experience Transportation.

5. Provide a self-evaluation of previous experience in providing the services proposed. This evaluation should include how long the agency has been providing services, how many clients

have been served, how successful the program has been, how success was determined, what kind of follow-up plan was used and documentation of the support of local community organizations.

Community enCompass has been empowering youth for over 12 years. Each year 20-30 high school students are engaged in leadership development, work experience, and arts/culture. Our YEP Director builds relationships with the YEP and stays in touch with them when they graduate. We just hired a YEP who recently graduated from Spellman College. Our YEP director documents the success of YEP in monthly committee reports which includes engagement in leadership development, work experience, and arts/culture, graduation rates, college acceptance, and college graduation. Our YEP have attended prestigious schools like Columbia, Harvard, Spellman, Michigan State University and many more.

6. Describe the system that will be used to organize and coordinate service delivery to new applicants or returning clients seeking assistance. This case management system should include provisions for additional screening, intake processing referral linkage, case monitoring and follow-through.

Elementary students who attend CATCH Camp or who are tutored by YEP often apply to become a YEP themselves when they reach High School. Once a teen is accepted into the YEP program, they stay in the program until the graduate from High School if they continue to stay engaged. As students graduate, openings for new students are created. Students apply and are interviewed for open slots. The YEP director keeps in touch with YEP graduates.

7. Describe the staffing component necessary to provide services proposed and their qualifications. Please attach resumes for individuals responsible for carrying out the proposed program.

YEP Director, Charlotte Johnson: Ms. Johnson has been working with and for youth in the city for over a decade, working closely with Muskegon Public Schools through her work as a Parent Advocate, Volunteer Reading Program Coordinator at two elementary schools, and coordinating our summer CATCH Camp. Ms. Johnson has been working with outcomes-based programming for Community enCompass for over 11 years. She is a neighbor and knows the families of the students well. charlotte@communityencompass.org
YEP and their supervisors participating in paid work experiences through CATCH Camp, Bethany Housing Rehab/Construction and Beautification and McLaughlin Grows Urban Farm. Every year, core-city youth participate in various aspects of our Youth Empowerment Project, including college tours, professional visits to local/regional employers, and a summer work experience in their neighborhoods.

8. Are any the staff responsible for carrying out the proposed program related to any City of Muskegon Commissioner or other city official?

No

9. Describe the agency's capabilities for carrying out this project, how it fits into the agency's overall program and what resources will be used to support.

Community enCompass is a grass-roots Christian Community Development Organization that has served downtown Muskegon neighborhoods for over 25 years. Community enCompass' mission is to empower people and build community in the Downtown neighborhoods by sharing

God's love, as we walk alongside neighbors, seeking justice and a better quality of life for all through long-term, sustainable changes.

Community enCompass envisions a restored neighborhood, in which all neighbors have identified and have opportunity to use their God-given gifts towards the building and strengthening of their community. We envision a neighborhood where all the assets of our community—the gifts of the residents, of the associations, and of the institutions—are fully utilized, so that our neighborhood becomes more of a picture—or preview! —of heaven.

Through a wide range of resident-driven programs, we effect positive, sustainable change by empowering individuals to improve the well-being of our community in three core areas:

Housing, Youth, and Food.

HOUSING - Stable housing is fundamental to a persons' ability to be and achieve their best, as well as an indication of neighborhood stability. Since 1995 we have been dedicated to producing and preserving affordable, quality housing, protecting vulnerable neighbors from social exclusion or displacement, and eradicating homelessness in Muskegon.

YOUTH – Youth discover who they are in our Youth Empowerment Program (YEP) – YEP Provides a space for teens to improve their self-esteem and discover their talent while they develop skills in the areas of working, learning, thriving, connecting, and leading. Empowering youth to become leaders now, while forever changing their futures, as they become pillars of society.

FOOD - Growing Food, Growing Community, Growing Neighbors is our priority as we increase access to locally grown, fresh produce for core-city Muskegon and provide education on healthy eating while also integrating community and healthcare resources to improve the health of neighbors who are living with or at risk for chronic diseases.

The YEP program is supported by multiple foundations and individual donors. Last year, because of COVID, there was a decrease in foundation support for the program.

10. Describe the agency's project evaluation plan and outcomes. Indicate what will be measured or assessed and how this evaluation will be used to determine whether the project is meeting its goals.

The purpose of the project is to use leadership development, mentor-supported work experience opportunities, and arts & cultural activities as a delivery system for improving the lives of low-income youth in downtown Muskegon.

21 High School Youth are provided the opportunity of paid work experience

21 High School Youth become leaders who are civically engaged in their neighborhood

21 High School Youth are engaged with the Massey Mural Project in Muskegon

50 Elementary Students attend 6 week Summer Day Camp with YEP (high school youth) Camp Counselors

Leadership Development Results: YEP who are engaged in leadership development and our community will benefit in the following ways: build social skills, communication skills, and connections across race, class, and age groups; youth learn skills to minimize stressors they may face; youth feel empowered when they become a valued, contributing member of the community; youth experience an increased sense of pride; youth feel they are understood, appreciated, and connected to the adults in their lives when they are affirmed; youth are more engaged in the community when they understand they now have a voice; youth have more awareness of the communities strengths; and negative perceptions about youth in our community are shifted.

Work Experience Results: Research shows that effective youth work experience programs have demonstrated positive effects on long-term outcomes with increased average earnings. Summer work experience decreases criminal justice involvement, youth mortality, and improves school attendance and graduation rates. Effective summer youth work experience programs, like YEP, are key to combating the inequities experienced by youth of color by reducing disparities to

accessing and benefiting from important work opportunities that expand their professional networks, contribute to the development of critical soft skills such as communication, responsibility, academic and career motivation, and work readiness.

Arts and Culture Results: Arts and Culture build stronger connections with their community and enhances their identity within their neighborhood. The Massey Mural project will create a greater shared understanding of our community and its history as teens create relationships with other teens and adults across artificial neighborhood boundaries. Additionally, this project will take them out of Muskegon as they will take a field trip to Massey's studio in Detroit where they will see the Massey's process and methods and have a hand in what he is creating. YEPS will also have an amazing opportunity to be involved in the installation of the work at the Arena.

11. Provide a plan for coordinating services with other agencies. Document any commitments in writing.

In previous years, YEP has coordinated with other agencies in the past, but with COVID there are no plans to coordinate with other agencies this year.

12. Describe the agency's capability in assuring that the proposed program will benefit low to moderate-income clients.

The program operates in a low-income neighborhood and serves students from low-income families. Students income eligibility will be documented during the application process.

13. Describe the functions of the agency's Board of Directors and how it was involved in the development and submission of this proposal.

The Board of Directors meets monthly to set the vision and direction of the organization. They get monthly reports on grant applications and awards. They signed the application exhibits.

14. Please address the following questions in your narrative:

- a. How many persons were served by your agency last year:

Over 9,000

- b. Was the proposed service/project provided previously by your agency? If so, how was it funded?

Yes, The project is funded by grants and private donations. Because of COVID, many of the foundations we normally solicit support from did not issue request for proposals or fund programs that were not directly related to COVID.

- c. Does your agency/organization have a fee schedule for this particular service/project? Please provide.

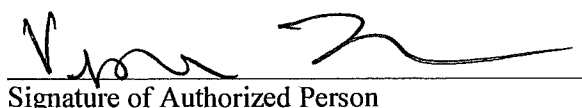
There is no charge for YEP to participate in the project.

DOCUMENTATION

1. Authorized Signatures – Submit an executed copy of Exhibit I certifying those officers or employees of the agency having the authority to carry out the performance contemplated by a contract and which designates the person or persons who execute the contract on behalf of the organization and legally bind the organization to the terms of the contract.
2. Accounting System – Submit an executed copy of Exhibit II certifying the adequacy of the agency's accounting system.
3. Security Policy – Submit an executed copy of Exhibit 3 certifying the confidentiality and retention of records.
4. Section 501(C) (3) – Submit evidence that the agency is in compliance. Attach a copy of the agency's certification.
5. Licensing – Submit certification that the agency and its employees comply with all local, state and federal licensing requirements for project services provided.
6. Personnel – Submit a copy of your employment profile including total employees, male, female and minority employees both male and female plus positions held.
7. Financial Audit – Submit the agency's most recent financial audit.
8. Board of Directors – Submit a roster of all members of the agency's Board of Directors: include their addresses and telephone numbers.

I hereby certify all information and documentation submitted as part of this proposal to be correct and true to the best of my knowledge.

Virginia Taylor

A handwritten signature in black ink, appearing to read 'Virginia Taylor', written over a horizontal line.

Signature of Authorized Person

4/6/2021

Date

EXHIBIT I

**CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICES
AUTHORIZED SIGNATURES**

The following officers or employees are duly authorized by the Board of Directors of Community enCompass to carry out the performance contemplated by a contract with the City of Muskegon and can execute a contract on behalf of Community enCompass.

<u>Name</u>	<u>Title</u>
<u>Kimi George</u>	<u>Executive Director</u>
<u>Virginia Taylor</u>	<u>Bethany Housing Director</u>
<u>Todd Olson</u>	<u>Operations Director</u>
<u>Bill Uetricht</u>	<u>Board Co-Chair</u>
<u>Tara Foreman</u>	<u>Board Co-Chair</u>

Tara Foreman

Signature of Chair of Board of Directors

4-5-21

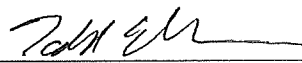
Date

EXHIBIT II

**CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICES
ACCOUNTING SYSTEM**

I am the chief financial officer of Community enCompass, and in this capacity I will be responsible for providing financial services adequate to ensure the establishment and maintenance of an accounting system for this agency. The accounting system and internal control procedures will be adequate to safeguard the assets of this agency, check the accuracy and reliability of accounting data, promote operating efficiency and assure compliance with prescribed management policies of the agency and the City of Muskegon.

Todd Olson



Signature of Financial Officer

4/6/21

Date

EXHIBIT III

**CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICES
SECURITY POLICY**

In keeping with the general conditions of the prime grant agreement between the City of Muskegon and the U.S. Department of Housing and Urban Development, all records, reports, etc., must be kept confidential and retained for a period of three years after the end of the contract. Because of these requirements, it is necessary for the subcontractor to maintain all data in a safe and secure place.

The undersigned certifies that Community enCompass shall have in place a mechanism for keeping records, reports and all data related to this project confidential and in a safe and secure place.

Lana Foreman

Signature of Chair of Board of Directors

4-5-21

Date

Internal Revenue Service

TO Gen. *Plemley*
Department of the Treasury

P. O. Box 2508
Cincinnati, OH 45201

Date: March 8, 2002

Bethany Housing Ministries, Inc.
% Gary Post
1105 Terrace St
Muskegon, MI 49442-3446

Person to Contact:
Ms. K. Hilson 31-07340
Customer Service Representative
Toll Free Telephone Number:
8:00 a.m. to 6:30 p.m. EST
877-829-5500
Fax Number:
513-263-3756
Federal Identification Number:
38-3279226

Dear Sir:

This letter is in response to your telephone call March 8, requesting a copy of your organization's determination letter. This letter will take the place of the copy you requested.

Our records indicate that a determination letter issued in March 1997 granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

REGISTRATION #:
29745



DANA NESSEL
ATTORNEY GENERAL

EXPIRATION DATE:
7/31/2021

Bethany Housing Ministries Inc
1105 Terrace
Muskegon, MI 49442

This is your current
CHARITABLE SOLICITATION REGISTRATION

Bethany Housing Ministries, Inc.

- The renewal form for this registration is due 30 days prior to above expiration date. The Renewal Solicitation Form is available on the Attorney General Charitable Trust's website www.mi.gov/charity.
- **Extension** may be requested if renewal cannot be submitted timely. A request must be received on or before the expiration date via **Email** and **must** include registration number in subject line. Notification will **not** be sent. If granted, a new expiration date will appear on our searchable database www.mi.gov/charitysearch.
- **Throughout the year**, notify us within 30 days of changes in the following:
 - Address, or your name and any other names used
 - Board of directors or resident agent
 - Any information that appears on your organization report on our searchable database at www.mi.gov/charitysearch.
 - Ceasing operations or merging with another organization
- Submit any **contracts** you enter into with professional fundraisers within 10 days of execution. Charities must verify the licensure of their professional fundraisers. Licensure can be verified at www.mi.gov/charitysearch.
- The Attorney General Registration number listed above must be referenced on all documents.

Charitable Trust Section
P.O. Box 30214
Lansing, MI 48909

Phone: 517-335-7571
Fax: 517-241-7074
Email: ct_email@mi.gov
Website: www.mi.gov/charity

Community enCompass Employee Status List

Name	Position	FTE	Gender	Race	Program
	Executive Director	40	F	White	Admin
Todd Olsen	Director of Operations	40	M	White	Admin
Kimi George	Rehab CD Catalyst	40	F	Asian	Admin/BH
Virginia Taylor	Bethany Housing Director	40	F	White	Admin/BH
Kiara Scott	PSH Coordinator/FSL	40	F	Black	BH/PSH
Charlotte Johnson	YEP Director	40	F	Black	YEP/HS
Michael Ramsey	Homeless Services Director	40	M	Hispanic	HS
Cherrelle Hughey	ESG Lead	40	F	Black	HS
Charlotte (CJ) Johnson	CERA Lead	40	F	White	HS
Anetria Brown	CERA Multi-Site Coord	40	F	Black	HS
Dawanda Greene	HRS	40	F	Black	HS
Edward Guerrero	HRS	40	M	Hispanic	HS
Dominique Smith	HRS	40	F	Black	HS
Lakeisha Handcock	HRS	40	F	Black	HS
Aaron Pulsifer	HRS	40	M	Black	HS
Carl Ferguson	HRS	40	M	Black	HS
Mary Wright	Clerical	40	F	Black	HS
Alex Brower	HMIS Lead	40	M	White	HS
Susan Williams	AmeriCorps	40	F	Black	HS
	AmeriCorps	20			HS
	AmeriCorps	20			HS
Steve Keglovitz	MCAH AmeriCorps VISTA	40	M	Hispanic	HS
Shari Resnick	Receptionist	40	F	White	HS
Chelsea Buchanan	CERA	40	F	White	HS
Stanley Shank	CERA	40	M	White	HS
Deana Washburn	CERA	40	F	White	HS
Anna Riegler	CERA	40	F	White	HS
Kevin	CERA	40	M	Hispanic	HS
Ericka Wickliffe	CHW	40	F	Black	HS
Laresa Burt	CHW	40	F	Black	HS
Zosia Mackay	Communications Coord	30	F	Black	Admin
Niyata Brown	PSH Family Support Liaison	40	F	Black	PSH
	Bethany Rehab	40			BH
Dana Gannon	MPFH Coordinator	40	F	White	Food/Farm
Tristan Shultz	McGrows Farm Manager	40	M	White	Farm
Al	McGrows Farm Hands	40	M	Hispanic	Farm

Supervisors/Senior Leadership Team

CITY OF MUSKEGON
COMMUNITY AND NEIGHBORHOOD SERVICES
BUDGET
 (Attach detailed breakdown of project expenses)

PROJECT TITLE: YEP		PROGRAM YEAR: 2021	
SUBCONTRACTOR: Community enCompass		DATE: April 6, 2021	
CONTRACT PERIOD: June 2021 – May 2022			
ACCOUNT	CDBG SHARE	OTHER FUNDS	TOTAL PROJECT AMT
Staff	\$20,000	\$11,716	\$31,716
Programming	0	\$31,617	\$31,617
Youth Work Stipends	0	\$32,500	\$32,500
Lawn Care Expenses	0	\$6,000	\$6,000
Total	\$20,000	\$81,833	\$101,833

Youth Empowerment Project (YEP)							
Income				Budget 2021	Comments		
Grants							
CCHD grant Diocese of GR				\$7,000.00			
Gerber Foundation				\$5,000.00			
Lookout Foundation - mural				\$3,000.00	Stipends for kids working on Massey Mural		
Trinity University/Barnabas Foundation				\$5,000.00			
NNIA				\$2,500	committed		
CDBG				\$20,000			
Contributions/Fundraisers				\$17,233.00			
Donor advised gift: Work based learning							
Donor Advised: Videography							
Christmas store				\$4,500.00			
Contracts: City of Muskegon (Lawn Care)				\$16,000.00			
Reimbursement (HBCU tour)							
In-Kind							
WMWorks! (17) Work Experience Stipends				\$19,000.00			
BC Teen Room				\$2,600.00			
Total Income				101,833			
Expenses							
Staff							
YEP Director				\$17,680.00			
Payroll expenses				\$3,536			
YEP Assistant				-			
Programs							
Field trips/college tours				10,000.00			
After School Center				150.00			
Leadership Development				7,500.00			
C.A.T.C.H. Camp				4,000.00			
Christmas store				4,500.00			
Fractal build				-			
Mural							
Videography							
Use of BC Teen Room				\$2,600			
Stipends							
Work Experience Awards				11,000.00			
WMWorks!				19,000.00			
Mural Stipends				2,500.00			
Lawn Care							
Lawn care Supervisor				10,500.00			
Equipment/Repair				5,000.00			
Supplies				1,000.00			
Crew wages (included in work experience awards above)							
Fundraising (soul food, camel race)							
Fundraiser expenses				767.00			
Transportation							
YEP Director gas usage				600.00			
Bethany van usage				1,500.00			
Bethany teen room buildout							
Total Expenses				101,833.00			
Net				0.00			

Board of Directors for Community enCompass 2020

Bill Uetricht **Co-Chair** 685 Curve Crest Drive, Muskegon 49445
Pastor, 1st Lutheran Church

***Tara Foreman** **Co-Chair** 164 Washington, Muskegon, MI 49441
Pastor, Bethany Christian Reformed Church, Neighbor

***Bob Garretson** **Treasurer** Jefferson St. Muskegon, MI 49441
Financial Advisory, Waddell and Reed, Neighbor

*** Stephanie Marion** **Secretary** 1753 Madison St, Muskegon, MI 49442
Business Owner, Solutions Unlimited Day Care Center, Neighbor

***Heidi Systema** 1604 Jefferson Street, Muskegon, MI 49441
Community Foundation for Muskegon County, Neighbor

***Barb Klingenmaier** 148 Campus, Muskegon 49441
Retired CPS Director, Neighbor

*** Alexis Dye** 1220 4th Street, Muskegon, 49442
Hackley Community Care Center, Neighbor

Jameson Goorman Spring Lake, MI 49457
Engineer, Cascade Engineering

***Holly Alway** Merrill Street, MI 49442
Injury Prevention Coordinator, Mercy Health, Neighbor

Chuck Fritz 1530 Bayview, Muskegon 49441
Retired, Substitute Teacher for MPS

Affirmative Action
(231)724-6703
FAX (231)722-1214

Assessor/
Equalization Co.
(231)724-6386
FAX (231)724-1129

Cemetery/Forestry
(231)724-6783
FAX (231)724-4188

City Manager
(231)724-6724
FAX (231)722-1214

Clerk
(231)724-6705
FAX (231)724-4178

Comm. & Neigh.
Services
(231)724-6717
FAX (231)726-2501

Computer Info.
Technology
(231)724-4126
FAX (231)722-4301

Engineering
(231)724-6707
FAX (231)727-6904

Finance
(231)724-6713
FAX (231)726-2325

Fire Department
(231)724-6795
FAX (231)724-6985

Human Resources
Co. (Civil Service)
(231)724-6442
FAX (231)724-6840

Income Tax
(231)724-6770
FAX (231)724-6768

Mayor's Office
(231)724-6701
FAX (231)722-1214

Planning/Zoning
(231)724-6702
FAX (231)724-6790

Police Department
(231)724-6750
FAX (231)722-5140

Public Works
(231)724-4100
FAX (231)722-4188

SafeBuilt
(Inspections)
(231)724-6715
FAX (231)728-4371

Treasurer
(231)724-6720
FAX (231)724-6768

Water Billing
(231)724-6718
FAX (231)724-6768

Water Filtration
(231)724-4106
FAX (231)755-5290



May 26, 2021

Mayor Stephen Gawron
Muskegon City Hall
933 Terrace Street
Muskegon, MI 49440

Re: Conflict of Interest: Community enCompass

Dear Mayor Gawron:

The City of Muskegon is considering entering into a contract with Bethany Housing Ministries d/b/a Community enCompass ("Community enCompass"). As a City Commissioner for the City of Muskegon, the following letter is provided.

As you are aware, I am employed by Community enCompass. More specifically, I am the Director of Homeless Services, which focuses solely on providing housing services and financial assistance to individuals who are homeless or at risk of becoming homeless, which includes eviction prevention services. I oversee 25 full-time and part-time employees and a budget of approximately \$ 7.9 million, including the COVID Emergency Rental Assistance program.

It is my understanding that the City of Muskegon sought proposals:

- a) to provide child care services and financial assistance for children of low-income households; and
- b) to provide youth with work and educational experiences between June of 2021 and May of 2022.

Community enCompass submitted a proposal for its Youth Empowerment Project ("YEP Youth Program"). The YEP Youth program provides early work experiences for children in low to moderate income households and provides educational opportunities promoting leadership skills. Approximately 21 high school youth are involved, with an anticipated budget of approximately \$100,000, which includes the \$20,000 from the City of Muskegon CDBG funds presently under consideration.

I receive no direct benefit from the City funding this program. I have no involvement in the YEP Youth Program. The programs I oversee do not receive any monies from the YEP Youth Program. My salary will not change based upon whether the City of Muskegon funds or does not fund the YEP Youth Program.

I do not foresee any indirect benefit from the City funding this program. I have no knowledge as to whether any of the money proposed for this program would go towards general operating expenses of Community enCompass. Further, it would be unlikely that anyone participating in one of my programs would also benefit from the YEP Youth Program.

I have had no involvement or discussions, either with City of Muskegon's staff or Community enCompass' staff, concerning this matter.

If you have any questions, please feel free to contact me.

Very truly yours,

Michael Ramsey

C: Ann Meisch
Oneata Bailey
Frank Peterson