

**City of Muskegon
City Commission Meeting
Agenda**

March 28, 2023, 5:30 pm

Muskegon City Hall

933 Terrace Street, Muskegon, MI 49440

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

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

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

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WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023	Title: Approval of Minutes
Submitted By: Ann Marie Meisch, MMC	Department: City Clerk
Brief Summary: To approve minutes of the February 28, 2023 Regular Meeting.	
Detailed Summary:	
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
Minutes**

**February 28, 2023, 5:00 pm
Muskegon City Hall
933 Terrace Street, Muskegon, MI 49440**

Present: Mayor Ken Johnson
Commissioner Rachel Gorman
Commissioner Rebecca St.Clair
Commissioner Eric Hood
Vice Mayor Willie German, Jr.
Commissioner Michael Ramsey
Commissioner Teresa Emory

Staff Present: City Manager Jonathan Seyferth
City Clerk Ann Meisch
City Attorney John Schrier
Deputy City Clerk Kimberly Young

1. Call To Order

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

2. Prayer

Vice Mayor German opened the meeting with a prayer.

3. Pledge of Allegiance

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

4. Roll Call

As recorded above

5. Honors, Awards, and Presentations

5.a Introduce New Staff - Department of Public Works

Dan VanderHeide, Director of Public Works, introduced Kyle Karczewski - our new Parks & Recreation Director.

5.b Ken James from Muskegon Community College

To present to the City Commission on the work that has been done to advance DEI at MCC and in our community.

Ken James, Chief Diversity Officer with Muskegon Community College was in attendance to provide an update to the City Commission regarding Diversity, Equity and Inclusion programs and opportunities that are offered by his Department.

5.c Fair Housing Settlement Update - Community and Neighborhood Services

Presenting Update on Fair Housing of West Michigan settlement with Fannie Mae.

Sharonda Carson, Community and Neighborhood Services Director, provided an update on the Fair Housing Settlement.

6. Public Comment on Agenda Items

No public comments were received.

7. Consent Agenda

Action No. 2023-36

Motion by: Commissioner Ramsey

Second by: Commissioner Hood

To accept the consent agenda as presented, minus item B.

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

MOTION PASSES (7 to 0)

7.a Approval of Minutes - City Clerk

To approve the corrected September 13, 2022 minutes and the January 24, 2023 Regular meeting minutes.

STAFF RECOMMENDATION: To approve the minutes.

7.c Landscaping Contract - Department of Public Works

Staff requests award of a three-year landscaping services contract to Barry's Greenhouses in the amount of \$111,185 (first year) for service areas including downtown, City Hall, the Farmers Market, and others.

Staff has worked with the Downtown BID, DDA, Chamber and other stakeholders to develop a landscaping contract that covers a wide array of landscaping services currently provided through the City Parks Department. There is a desire among the stakeholders to improve the level of service being provided, and a desire among city staff to free up staffing resources to improve service in other areas of the city parks. The RFP was presented to the Commission at the November 7, 2022 combined work session and regular meeting, and the results were discussed with the Commission at the Work Session Meeting on February 13, 2023.

The contract proposes eight (8) areas identified on the included map, with each area having a distinct scope of work and a proposed assigned cost share, as a 3-year contract with optional extensions for a 4th and 5th year. The original RFP included work in the Lakeside area, but those businesses have decided not to participate at this time.

The Community Foundation for Muskegon County (CFFMC, via a generous donor, is participating in this contract by contributing the full amount for the continuation of services at Hackley Park in the amount of \$36,500 (for the first year).

The DDA and Downtown BID discussed their future in a joint meeting on February 14, 2023. The Downtown BID is expiring at the end of 2023, so the organizations have decided to jointly fund their share going forward (the BID in year one, and the DDA in the following years). The City will manage the contract on behalf of the BID and DDA and invoice for their portions (\$38,925 in the first year).

AMOUNT REQUESTED: \$27,840 Parks/General and \$7,920 Farmers Market

AMOUNT BUDGETED: \$0 FY23 and As Needed FY24

FUND OR ACCOUNT: 101-770 (Parks) and 101-808 (Farmers Mkt)

STAFF RECOMMENDATION: To authorize staff to enter into a three-year contract with Barry's Greenhouses for landscaping services in various parts of the City for a first-year contract total of \$111,185.

7.d Sale of 769 Catawba - Community and Neighborhood Services

Seeking authorization to sell 769 Catawba to a qualified buyer. The CNS Department utilized HOME Investment Partnership Program funds to rehabilitate a home at 769 Catawba to sell through our Homebuyer Program. Renovations are completed, and a qualified buyer, Jacob Insinga, has put in an offer of \$134,000 with a \$14,000 subsidy, which CNS has accepted. Income from this sale will be reinvested in our programming.

STAFF RECOMMENDATION: Adopt the resolution for the sale of 769 Catawba to Jacob Idsigna and authorize the City Clerk to sign it.

7.e Relocation Plan - Community & Neighborhood Services

As an entitlement community that receives CDBG and HOME funds from the US Department of Housing and Urban Development (HUD), we are required to have a written Residential Antidisplacement and Relocation Assistance Plan (RARAP). This plan has been reviewed and approved by the regional relocation expert for HUD, Maureen Thurman on February 13, 2023. The standards set forth in this plan minimizes and prevents unnecessary displacement of people within our community for CDBG and HOME funded projects.

STAFF RECOMMENDATION: Adopt the resolution for the approval of the Residential Antidisplacement and Relocation Assistance Plan (RARAP).

7.f 1194 Pine Lease Agreement

Staff is seeking commission approval to adopt lease agreement for 1194 Pine St. Unit B. Tenant living at 1194 Pine Unit B is subject to protection from displacement under the Residential Anti-displacement and Relocation Assistance Plan. The Plan was executed by way of the Uniform Rental Assistance (URA) Act of 1070 to avoid unnecessary displacement triggered by acquisition or demolition of properties purchased utilizing CDBG or HOME funds.

STAFF RECOMMENDATION: To approve the lease agreement for 1194 Pine Street, Unit B.

7.b Financing a Fire Pumper Truck - Finance

At this time, we are seeking authorization to enter into a lease agreement with Huntington Bank for the purchase of a Fire Pumper Truck. At the August 10, 2021 City Commission meeting the Commission voted to

purchase two Fire Trucks. The first truck has already been financed in 2021. By the beginning of March 2023, the second Fire Pumper Truck will be ready to purchase for \$761,602.65. At this time, we are seeking authorization to enter into a lease agreement with Huntington Bank. The proposed terms are for a five-year lease at 4.4% interest rate with the City purchasing the truck at the end of the lease for \$1. There is a one-time \$500.00 processing fee.

AMOUNT BUDGETED: \$14,163.97 per month for 60 months

FUND OR ACCOUNT: 101-50336-5700

STAFF RECOMMENDATION: To allow staff to enter into a lease agreement with Huntington Bank for Fire Pumper Truck.

Action No. 2023-37

Motion by: Commissioner St.Clair

Second by: Vice Mayor German

To allow staff to enter into a lease agreement with Huntington Bank for Fire Pumper Truck.

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

MOTION PASSES (7 to 0)

8. Public Hearings

9. Unfinished Business

9.a Housing Board of Appeals, Demolition 835 W. Forest - Public Safety

To concur with the Housing Board of Appeals decision to demolish and authorize administration to obtain bids for the demolition and that the Mayor and Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder. The Housing Board of Appeals has deemed 835 W. Forest Avenue to be in property maintenance violation. Property has been a long-standing area of blight and public nuisance/hazard.

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish and authorize administration to obtain bids

for the demolition and that the Mayor and Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Action No. 2023-38

Motion by: Commissioner Ramsey

Second by: Commissioner Emory

To concur with the Housing Board of Appeals decision to demolish and authorize administration to obtain bids for the demolition and that the Mayor and Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Amendment:

Motion by: Vice Mayor German

Second by: Commissioner St.Clair

To table this item until the April 11, 2023 General Session.

Ayes: (3): Commissioner St.Clair, Commissioner Hood, and Vice Mayor German

Nays: (4): Mayor Johnson, Commissioner Gorman, Commissioner Ramsey, and Commissioner Emory

MOTION FAILS (3 to 4)

Amendment:

Motion by: Commissioner St.Clair

Second by: Commissioner Hood

To table this item until the March 14, 2023 General Session.

Ayes: (4): Mayor Johnson, Commissioner St.Clair, Commissioner Hood, and Vice Mayor German

Nays: (3): Commissioner Gorman, Commissioner Ramsey, and Commissioner Emory

MOTION PASSES (4 to 3)

10. New Business

10.a Housing Board of Appeals, Demolition - 771 McLaughlin Ave & 1984 Reynolds St. - Public Safety

To concur with the Housing Board of Appeals decision to demolish and authorize administration to obtain bids for the demolition and that the Mayor and Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder. Housing Board of Appeals has deemed 771 McLaughlin Ave and 1984 Reynolds St. to be in property maintenance violation. Property has been a long-standing area of blight and public nuisance/hazard.

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish and authorize administration to obtain bids for the demolition and that the Mayor and Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

Action No. 2023-39

Motion by: Commissioner Ramsey

Second by: Vice Mayor German

To concur with the Housing Board of Appeals decision to demolish and authorize administration to obtain bids for the demolition and that the Mayor and Clerk be authorized and directed to execute a contract for demolition with the lowest responsible bidder.

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

MOTION PASSES (7 to 0)

11. Any Other Business

Vice Mayor German recognizes that it is Black History month and would like to pay tribute to several historic black leaders including:

- U.S. House Representative, Joseph Hayne Rainey - the first African American to serve in the U.S. House of Representatives. The First to preside over the House, and the longest-serving Black lawmaker in Congress during the Reconstruction era.
- Lewis Howard Latimer - an African American inventor and patent draftsman of the late 19th and early 20th centuries
- Benjamin O Davis, Sr. - the first Black general in the United States Army. He led the Tuskegee Airmen during World War II and played an essential role in integrating the U.S. Air Force.

- Dr. June Jackson Christmas - Graduate from Vassar College, psychiatrist specializing in community mental health care and was mental health commissioner for New York City under three mayors. Her fight against housing discrimination changed New York City law.
- President Barack Hussein Obama - 44th President of the United States and the first African American commander-in-chief. He served two terms, in 2008 and 2012.

Community Engagement Manager, Deborah Sweet announced three open houses coming up to discuss road projects happening in the City.

12. Public Comment on Non-Agenda items

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

Public comments were received.

13. Closed Session

14. Adjournment

Motion by: Vice Mayor German

Second by: Commissioner St.Clair

To adjourn the City Commission meeting at 7:43 p.m.

MOTION PASSES

Respectfully Submitted,
Ann Marie Meisch, MMC - City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023		Title: Sale of 1379 Pine Street
Submitted By: LeighAnn Mikesell		Department: City Manager's Office
Brief Summary: Staff is requesting approval of a purchase agreement for 1379 Pine Street.		
Detailed Summary & Background: 1379 Pine Street was constructed through the agreement with Dave Dusendang to construct infill housing with ARPA funding. The offer is for the full listing price with no seller concessions. The offer also includes costs to cover appliances and air conditioning.		
Goal/Focus Area/Action Item Addressed: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Diverse housing types		
Amount Requested: N/A	Amount Budgeted: N/A	
Fund(s) or Account(s):	Fund(s) or Account(s):	
Recommended Motion: to approve the purchase agreement for 1379 Pine Street.		
Approvals: Immediate Division Head ☐ Information Technology ☐ Other Division Heads ☒ Communication ☐ Legal Review ☒		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		

Please read and have buyer/s sign. Attach with offer.

Paragraph 8- Seller will provide a quit claim deed vs a warranty deed.
Builder one year warranty starts from day of Certificate of Occupancy.

Each dwelling unit shall have an approved established vegetative ground cover, native to the immediate area within 600 feet, no less than 12 months after occupancy. Approval shall be given by zoning staff of the Planning Department as part of the initial residential site plan review. A minimum of one shade tree, two and one-half inches (2.5") in diameter, four feet (4') from the ground or one six foot (6') evergreen tree shall be provided. Existing landscaping may be accepted in lieu of this requirement. "

<i>Joseph Harris</i>	dotloop verified 03/07/23 6:55 PM EST E8TM-PJY2-7GPE-Q0FE
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Buyer

<i>Lauren Harris</i>	dotloop verified 03/07/23 6:53 PM EST YGKE-FM8H-RKLP-GQRM
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Buyer

<i>Teona Proos</i>	dotloop verified 03/07/23 7:14 PM EST GKR5-U0JW-WUHV-SEJJ
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Buyer's Agent

<i>LeighAnn Mikesell</i>	dotloop verified 03/13/23 11:09 AM EDT E7OC-DNV9-BZVA-BTUX
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LeighAnn Mikesell

Pre-Approval

 Agent Copy

Monday, February 6, 2023

Dear Teona,

We are excited to inform you that your clients, Joseph & Lauren Harris, are pre-approved and ready to make offers.

We pride ourselves on helping our clients make responsible financial decisions, as well as giving Realtors the confidence that they have strong buyers. The Treadstone pre-approval is based on a close analysis and confirmation of your client's income, credit, and assets. Because of our unwavering commitment to responsible lending, we have the strongest, most respected pre-approval letter in the industry. Our pre-approvals are as good as cash.

Pre-Approved \$250,000

Loan Program FHA

Expiration Date July 7, 2023

Your Client's Status

Income ✓

Assets ✓

Credit ✓

Amber Wagner
616.420.4900
AmberW@treadstonemortgage.com

210 Fulton Street E
Grand Rapids, MI 49503
www.treadstonemortgage.com

Amber Wagner NMLS 1428273 | Treadstone Funding propelled by Neighborhood Loans NMLS 222982

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WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE: 03/07/2023, 6:33 PM (time) MLS #: 23001387

SELLING OFFICE: Bellabay Realty SW BROKER LIC.#: 6505400607 REALTOR® PHONE: 616-427-0814

LISTING OFFICE: West Urban Realty REALTOR® PHONE: 6163662459

1. **Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, any reference to "days" in this Agreement refers to calendar days. The first calendar day begins at 12:01 a.m. on the day after the Effective Date. Any reference to "time" refers to local time.
2. **Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the Disclosure Regarding Real Estate Agency Relationships. The selling licensee is acting as (choose one):
☐ Agent/Subagent of Seller ☒ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator
- Primary Selling Agent Name: _____ Teona Proos _____ Email: _____ soldbyproos@gmail.com _____ Lic.#: _____ 6501423143 _____
- Alternate Selling Agent Name: _____ Email: _____ Lic.#: _____
3. **Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)
☐ Buyer has received the Seller's Disclosure Statement, dated _____.
☒ Buyer has not received the Seller's Disclosure Statement. Buyer may terminate this Agreement, in writing, any time prior to receipt of the Seller's Disclosure Statement. Once Buyer has received the Seller's Disclosure Statement, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions: _____
☐ Seller is exempt from the requirements of the Seller Disclosure Act.
4. **Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.
5. **Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of _____ Muskegon _____,
County of _____ Muskegon County _____, Michigan, commonly known as (insert mailing address: street/city/state/zip code)

1379 Pine Street, Muskegon, MI 49442
with the following legal description and tax parcel ID numbers:

PP# 24-205-267-0008-00

The following paragraph applies only if the Premises include unplatted land:

Seller agrees to grant Buyer at closing the right to make (insert number) _____ division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before _____, of the proposed division to create the Premises.

6. **Purchase Price:** Buyer offers to buy the Property for the sum of \$ 175,962.00
one hundred seventy-five thousand nine hundred sixty-two U.S. Dollars
7. **Seller Concessions**, if any: 0
zero dollars and zero cents
8. **Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.

- ☐ CASH. The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.
- ☒ NEW MORTGAGE. The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a first type 30 (year) mortgage in the amount of 96.5 % of the Purchase Price bearing interest at a rate not to exceed 7.5 % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within 3 days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☐ Buyer will agree to pay an amount not to exceed \$ 0 representing repairs required as a condition of financing. Buyer ☒ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$_____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$_____ will be payable in monthly installments of \$_____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$_____) between the Purchase Price above provided and the unpaid balance (approximately \$_____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ OTHER:

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.

☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

Range/oven, refrigerator, washer, dryer, microwave, dishwasher, central air conditioning unit

but does not include:

1379 Pine Street, Muskegon, MI 49442
Subject Property Address/Description

03/07/2023
Date

6:33 PM
Time



Buyer's Initials



Seller's Initials

11. Heating and Cooking Fuels: Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

12. Assessments (choose one):

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required to connect to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. Property Taxes: Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

14. Well/Septic: Within ten (10) days after the Effective Date, (choose one) ☐ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other:

15. Inspections & Investigations:

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 5 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

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accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions:

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions:

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☐ Buyer or ☒ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☐ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 04/21/2023. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee.** Exceptions:

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At _____ ☐ a.m. ☐ p.m. on the _____ day **after** completion of the closing of the sale, during which time Seller

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will have the privilege to occupy the Property and hereby agrees to pay Buyer \$_____ as an occupancy fee for this period payable at closing, WITHOUT PRORATION. Payment shall be made in the form of cash or certified funds.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ 100.00 per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer. Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until 10:00 PM (time) on 03/10/2023 (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$ 1800.00 shall be submitted to Bellabay Realty SW (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Earnest Money Deposit shall be refunded to Buyer. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.

25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.

26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.

27. **Other Provisions:**

28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.

29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.

30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic

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Seller's Initials

communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' license numbers, wire instructions, bank account numbers, etc.), **even if that electronic communication appears to be from the Broker, Title Company, or Lender, DO NOT** reply until you have verified the authenticity of the email by direct communication with Broker, Title Company, or Lender. **DO NOT** use telephone numbers provided in the email. Such requests may be part of a scheme to steal funds or use your identity.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address: Joseph Harris dotloop verified 03/07/23 7:12 PM EST FPHG-YEG1-1JQJ-2K76 **Buyer**
 Buyer 1 Phone: (Res.) _____ (Bus.) _____ Joseph Harris
 Print name as you want it to appear on documents.
 Buyer 2 Address: Lauren Harris dotloop verified 03/07/23 7:11 PM EST GPHG-DXK1-1QY1-GHTC **Buyer**
 Buyer 2 Phone: (Res.) _____ (Bus.) _____ Lauren Harris
 Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☒ As written. ☐ As written except:

Counteroffer, if any, expires _____, at _____ (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated _____ (choose one): ☐ Yes ☐ No.
 Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. **Listing Office Address:** 3265 Walker Ave NW,, Suite D, Grand Rapids, MI 49544 Listing Broker License # _____
Listing Agent Name: Mariana Murillo VanDam Listing Agent License # 6506015435

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time): LeighAnn Mikesell dotloop verified 03/13/23 11:09 AM EDT RYEO-NWO4-QPNM-B1XN
 Is Seller a U.S. Citizen or Resident Alien? ☒ Yes ☐ No*

 Print name as you want it to appear on documents.

X (Seller's Signature, Date, Time): _____
 Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

 Print name as you want it to appear on documents.

Seller's Address: _____ Seller's Phone (Res.) _____ (Bus.) _____
 * If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time): _____
 X (Buyer's Signature, Date, Time): _____

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counter offer.

X (Seller's Signature, Date, Time): _____
 X (Seller's Signature, Date, Time): _____

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WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023		Title: Sale of 263 Catherine Avenue
Submitted By: LeighAnn Mikesell		Department: City Manager's Office
Brief Summary: Staff is requesting approval of a purchase agreement for 263 Catherine Avenue.		
Detailed Summary & Background: 263 Catherine Avenue was constructed through the agreement with Dave Dusendang to construct infill housing with ARPA funding. The offer is for \$6,000 over the full listing price with \$6,000 in seller concessions.		
Goal/Focus Area/Action Item Addressed: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Diverse housing types		
Amount Requested: N/A	Amount Budgeted: N/A	
Fund(s) or Account(s):	Fund(s) or Account(s):	
Recommended Motion: to approve the purchase agreement for 263 Catherine Avenue.		
Approvals: Immediate Division Head ☐ Information Technology ☐ Other Division Heads ☒ Communication ☐ Legal Review ☒		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		

WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE: 03/13/2023, (time) _____ MLS # TBD # _____

SELLING OFFICE: 616 REALTY BROKER LIC.#: 6505367456 REALTOR® PHONE: 616-421-5327

LISTING OFFICE: West Urban Realty REALTOR® PHONE: 616-366-2459

1. **Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, any reference to "days" in this Agreement refers to calendar days. The first calendar day begins at 12:01 a.m. on the day after the Effective Date. Any reference to "time" refers to local time.

2. **Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the Disclosure Regarding Real Estate Agency Relationships. The selling licensee is acting as (choose one):
☐ Agent/Subagent of Seller ☒ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator

Primary Selling Agent Name: Catherine Conklin Email: cat@homesgr.com Lic.#: 6506046008

Alternate Selling Agent Name: _____ Email: _____ Lic.#: _____

3. **Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)

☐ Buyer has received the Seller's Disclosure Statement, dated _____.
 Buyer has not received the Seller's Disclosure Statement. Buyer may terminate this Agreement, in writing, any time prior to receipt of the Seller's Disclosure Statement. Once Buyer has received the Seller's Disclosure Statement, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions: Home Warranty
☒ Seller is exempt from the requirements of the Seller Disclosure Act.

4. **Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.

5. **Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of Muskegon,
 County of Muskegon, Michigan, commonly known as (insert mailing address: street/city/state/zip code)

263 Catherine St

with the following legal description and tax parcel ID numbers:

CITY OF MUSKEGON REVISED PLAT OF 1903 LOT 16 BLK 260 EXC THE EAST 48.75 FT OF SD LOT
 AND THE E 31.5 FT OF LOTS 1 & 2 EX W 11.5 FT OF S 45 FT BLK 260

PP# 24-205-260-0016-10

The following paragraph applies only if the Premises include unplatted land:

Seller agrees to grant Buyer at closing the right to make (insert number) _____ division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before _____, of the proposed division to create the Premises.

6. **Purchase Price:** Buyer offers to buy the Property for the sum of \$ 175,900
one hundred seventy-five thousand nine hundred U.S. Dollars

7. **Seller Concessions**, if any: 6,000

8. **Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
 SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.

☐ CASH. The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.

☒ NEW MORTGAGE. The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a FHA type 30 (year) mortgage in the amount of 100 % of the Purchase Price bearing interest at a rate not to exceed 8 % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within 3 days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☐ Buyer will agree to pay an amount not to exceed \$ _____ n/a representing repairs required as a condition of financing. Buyer ☒ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from



Buyer's Initials



Seller's Initials

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$_____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$_____ will be payable in monthly installments of \$_____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$_____) between the Purchase Price above provided and the unpaid balance (approximately \$_____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ OTHER:

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.

☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

Garage Door Opener; Home Warranty; Laminate Floor

but does not include:

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Buyer's Initials



Seller's Initials

11. **Heating and Cooking Fuels:** Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

12. **Assessments (choose one):**

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required to connect to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. **Property Taxes:** Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.
Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

14. **Well/Septic:** Within ten (10) days after the Effective Date, (choose one) ☐ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other:

15. **Inspections & Investigations:**

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 5 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

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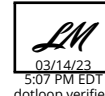
03/13/2023

Date

Time



Buyer's Initials



Seller's Initials

accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions:

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions: Buyer agrees to pay an Administrative Processing Fee of 395 to 616 REALTY at closing of sale.

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☐ Buyer or ☐ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☒ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

Seller to provide existing survey, if available

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

1 year warranty provided by builder.

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 04/14/2023. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee.** Exceptions:

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At ☐ a.m. ☐ p.m. on the day **after** completion of the closing of the sale, during which time Seller

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Buyer's Initials



Seller's Initials

will have the privilege to occupy the Property and hereby agrees to pay Buyer \$ 0 as an occupancy fee for this period payable at closing, WITHOUT PRORATION. Payment shall be made in the form of cash or certified funds.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$ 250 per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer. Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until 3 p.m. (time) on 03/15/2023 (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$ 1000 shall be submitted to Chicago Title (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Earnest Money Deposit shall be refunded to Buyer. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.
25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.
26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.
27. **Other Provisions:**
28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.
29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.
30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic

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communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' license numbers, wire instructions, bank account numbers, etc.), **even if that electronic communication appears to be from the Broker, Title Company, or Lender, DO NOT** reply until you have verified the authenticity of the email by direct communication with Broker, Title Company, or Lender. **DO NOT** use telephone numbers provided in the email. Such requests may be part of a scheme to steal funds or use your identity.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address _____   **Buyer**
 Buyer 1 Phone: (Res.) _____ (Bus.) _____
 Print name as you want it to appear on documents.
 Buyer 2 Address _____   **Buyer**
 Buyer 2 Phone: (Res.) _____ (Bus.) _____
 Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☒ As written. ☐ As written except:

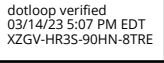
Counteroffer, if any, expires _____, at _____ (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated _____ na _____ (choose one): ☐ Yes ☐ No.
 Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. **Listing Office Address:** 3265 Walker Ave NW, Suite D, Grand Rapids, MI 49544 Listing Broker License # 6506015435
Listing Agent Name: Mariana Murillo VanDam Listing Agent License # 6506015435

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time):   _____
 LeighAnn Mikesell Is Seller a U.S. Citizen or Resident Alien? ☒ Yes ☐ No*
 Print name as you want it to appear on documents.

X (Seller's Signature, Date, Time): _____

 Print name as you want it to appear on documents. Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Seller's Address: _____ Seller's Phone (Res.) _____ (Bus.) _____
 * If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time): _____
 X (Buyer's Signature, Date, Time): _____

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counter offer.

X (Seller's Signature, Date, Time): _____
 X (Seller's Signature, Date, Time): _____

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Buyer's Initials



Seller's Initials



March 5, 2023

RE: PRE-APPROVAL LETTER

Dear Adam Clark:

Congratulations!!! Purchasing a home is such an exciting experience. I would like to take this opportunity to say "Thank You" for calling upon me to assist you in your home buying needs. I look forward to the opportunity of working with you and strive to provide you with excellent customer service. My goal is to make your loan process an enjoyable one.

Based upon the preliminary information that you have provided me, I am pleased to inform you that you are pre-approved for a FHA Loan with Team Mortgage Company LLC.

This approval is contingent upon an acceptable appraisal, title review, and survey of the subject property. It is also assuming that there is no change in income, debt, credit score, and employment after the date indicated on this letter.

Please do not hesitate to contact me at 616-318-0385 if you have any questions.

Sincerely,

Thomas C. Girardot
President / Senior Mortgage Consultant

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023		Title: Sale of 1373 Pine Street
Submitted By: LeighAnn Mikesell		Department: City Manager's Office
Brief Summary: Staff is requesting approval of a purchase agreement for 1373 Pine Street.		
Detailed Summary & Background: 1373 Pine Street was constructed through the agreement with Dave Dusendang to construct infill housing with ARPA funding. The offer is over the full listing price with 6% seller concessions. The offer also includes costs to cover appliances. Once the appliances and seller concessions are accounted for, the offer is for full price.		
Goal/Focus Area/Action Item Addressed: Create an environment that effectively attracts new residents and retains existing residents by filling existing employment gaps, attracting new and diverse businesses to the city, and expanding access to a variety of high-quality housing options in Muskegon. Diverse housing types		
Amount Requested: N/A		Amount Budgeted: N/A
Fund(s) or Account(s):		Fund(s) or Account(s):
Recommended Motion: to approve the purchase agreement for 1373 Pine Street.		
Approvals: Immediate Division Head ☐ Information Technology ☐ Other Division Heads ☒ Communication ☐ Legal Review ☒		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		

WEST MICHIGAN REGIONAL PURCHASE AGREEMENT

DATE: 03/10/2023, _____ (time) MLS # 71023001386 #

SELLING OFFICE: Pinnacle Realty BROKER LIC.#: 6505392630 REALTOR® PHONE: 6164471255

LISTING OFFICE: West Urban Realty REALTOR® PHONE:

- Effective Date:** This Agreement is effective on the date of Seller's acceptance of Buyer's offer or Buyer's acceptance of any counteroffer, as the case may be, and this date shall hereafter be referred to as the "Effective Date". Further, any reference to "days" in this Agreement refers to calendar days. The first calendar day begins at 12:01 a.m. on the day after the Effective Date. Any reference to "time" refers to local time.
- Agency Disclosure:** The Undersigned Buyer and Seller each acknowledge that they have read and signed the Disclosure Regarding Real Estate Agency Relationships. The selling licensee is acting as (choose one):
☐ Agent/Subagent of Seller ☒ Buyer's Agent ☐ Dual Agent (with written, informed consent of both Buyer and Seller)
☐ Transaction Coordinator
 Primary Selling Agent Name: Claire Ritter Email: findmihomewithclaire@outlook.com Lic.#: 6501448802
 Alternate Selling Agent Name: _____ Email: _____ Lic.#: _____
- Seller's Disclosure Statement:** (This paragraph applies to sales of one-to-four family residential units.)
☐ Buyer has received the Seller's Disclosure Statement, dated _____.
☐ Buyer has not received the Seller's Disclosure Statement. Buyer may terminate this Agreement, in writing, any time prior to receipt of the Seller's Disclosure Statement. Once Buyer has received the Seller's Disclosure Statement, Buyer may terminate this Agreement, in writing, within 72 hours of receipt if the disclosure was received in person, or within 120 hours if received by registered mail. Exceptions: _____
☒ Seller is exempt from the requirements of the Seller Disclosure Act.
- Lead-Based Paint Addendum:** Transactions involving homes built prior to 1978 require a written disclosure which is hereby attached and will be an integral part of this Agreement.
- Property Description:** Buyer offers to buy the property located in the ☒ City ☐ Village ☐ Township of Muskegon,
 County of Muskegon, Michigan, commonly known as (insert mailing address: street/city/state/zip code)
1373 Pine St, Muskegon, MI 49442
 with the following legal description and tax parcel ID numbers:
CITY OF MUSKEGON REVISED PLAT OF 1903 N 6.50 FT OF LOT 8 AND S 33 FT OF LOT 9 BLOCK 267

PP# 24205267000800

The following paragraph applies only if the Premises include unplatted land:
 Seller agrees to grant Buyer at closing the right to make (insert number) All division(s) under Section 108(2), (3), and (4) of the Michigan Land Division Act. (If no number is inserted, the right to make divisions under the sections referenced above stays with any remainder of the parent parcel retained by Seller. If a number is inserted, Seller retains all available divisions in excess of the number stated; however, Seller and/or REALTOR® do not warrant that the number of divisions stated is actually available.) If this sale will create a new division, Seller's obligations under this Agreement are contingent on Seller's receipt of municipal approval on or before 04/20/2023, of the proposed division to create the Premises.

- Purchase Price:** Buyer offers to buy the Property for the sum of \$ 184215
one hundred eighty-four thousand two hundred fifteen U.S. Dollars
- Seller Concessions**, if any: 6% of the purchase price towards the buyers closing costs, discount points, and prepaids
- Terms:** The Terms of Purchase will be as indicated by "X" below: (Other unmarked terms of purchase do not apply.)
 SOURCE OF FUNDS TO CLOSE: Buyer represents that the funds necessary to close this transaction on the terms specified below are currently available to Buyer in cash or an equally liquid equivalent.

If the Property's value stated in an appraisal obtained by Buyer or Buyer's lender is less than the Purchase Price, Buyer shall within three (3) days after receipt of the appraisal: 1) renegotiate with the Seller, 2) terminate the transaction, in which case Buyer shall receive a refund of Buyer's Earnest Money Deposit, or 3) proceed to close the transaction at the agreed Purchase Price.

- ☐ **CASH.** The full Purchase Price upon execution and delivery of Warranty Deed. Buyer Agrees to provide Buyer Agent/Dual Agent verification of funds within five (5) days after the Effective Date, and consents to the disclosure of such information to Seller and/or Seller's Agent. If verification of funds is not received within 5 days after the Effective Date, Seller may terminate this Agreement at any time before verification of funds is received by giving written notice to Buyer. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement.
- ☒ **NEW MORTGAGE.** The full Purchase Price upon execution and delivery of Warranty Deed, contingent upon Buyer's ability to obtain a FHA type 30 (year) mortgage in the amount of 96.5 % of the Purchase Price bearing interest at a rate not to exceed _____ % per annum (rate at time of loan application), on or before the date the sale is to be closed. Buyer agrees to apply for a mortgage loan, and pay all fees and costs customarily charged by Buyer's lender to process the application, within 3 days after the Effective Date, not to impair Buyers' credit after the date such loan is offered. ☐ Seller ☒ Buyer will agree to pay an amount not to exceed \$ 0 representing repairs required as a condition of financing. Buyer ☒ agrees ☐ does not agree to authorize Buyer's Agent/Dual Agent to obtain information from

Buyer's lender regarding Buyer's financing, and consents to the disclosure of this information to Seller and/or Seller's Agent.
Exceptions:

☐ SELLER FINANCING (choose one of the following): ☐ CONTRACT or ☐ PURCHASE MONEY MORTGAGE

In the case of Seller financing, Buyer agrees to provide Seller with a credit report within 72 hours after the Effective Date. If the credit report is unacceptable to Seller, Seller shall have the right to terminate this offer within 48 hours of Seller's receipt, or if Buyer fails to provide said credit report to Seller within the time frame allotted, Seller shall have the right to terminate this offer within 48 hours. Seller is advised to seek professional advice regarding the credit report.

\$_____ upon execution and delivery of a _____ form (name or type of form and revision date), a copy of which is attached, wherein the balance of \$_____ will be payable in monthly installments of \$_____ or more including interest at _____ % per annum, interest to start on date of closing, and first payment to become due thirty (30) days after date of closing. The entire unpaid balance will become due and payable _____ months after closing. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ EQUITY (choose one of the following): ☐ Formal Assumption or ☐ Informal Assumption
Upon execution and delivery of: ☐ Warranty Deed subject to existing mortgage OR ☐ Assignment of Vendee Interest in Land Contract, Buyer to pay the difference (approximately \$_____) between the Purchase Price above provided and the unpaid balance (approximately \$_____) upon said mortgage or land contract, which Buyer agrees to assume and pay. Buyer agrees to reimburse Seller for accumulated funds held in escrow, if any, for payment of future taxes and insurance premiums, etc. Any appraisal required by Buyer shall be arranged and paid for by Buyer within ten (10) days after the Effective Date of this Agreement. Exceptions:

☐ OTHER: _____

9. **Contingencies:** Buyer's obligation to consummate this transaction (choose one):

- ☒ **IS NOT CONTINGENT** - is not contingent upon the sale or exchange of any other property by Buyer.
- ☐ **IS CONTINGENT UPON CLOSING** - is contingent upon closing of an existing sale or exchange of Buyer's property located at:

A copy of Buyer's agreement to sell or exchange that property is being delivered to Seller along with this offer. If the existing sale or exchange terminates for any reason, Buyer will immediately notify Seller, and either party may terminate this Agreement in writing, within 3 days of Buyer's notice to Seller. If either party terminates, Buyer shall receive a refund of any applicable Earnest Money Deposit.

☐ **IS CONTINGENT UPON THE SALE AND CLOSING** - is contingent upon the execution of a binding agreement and the closing of a sale or exchange of Buyer's property located at _____ on or before _____. Seller will have the right to continue to market Seller's Property until Buyer enters into a binding agreement to sell or exchange Buyer's property and delivers a copy thereof to Seller. During such marketing period, Seller may enter into a binding contract for sale to another purchaser on such price and terms as the Seller deems appropriate. In such event, this Agreement will automatically terminate, Buyer will be notified promptly, and Buyer's Earnest Money Deposit will be refunded. Exceptions:

10. **Fixtures & Improvements:** The following is not intended to be an all-inclusive list of items included with the Property. All improvements and appurtenances are included in the Purchase Price, if now in or on the Property, unless rented, including the following: all buildings; landscaping; attached smart home devices; attached security systems; lighting fixtures and their shades and bulbs; ceiling fans; hardware for draperies and curtains; window shades and blinds; built-in kitchen appliances, including garbage disposal and drop-in ranges; wall to wall carpeting, if attached; all attached mirrors; all attached TV mounting brackets; all attached shelving; attached work benches; stationary laundry tubs; water softener; water heater; incinerator; sump pump; water pump and pressure tank; heating and air conditioning equipment (window units excluded); attached humidifiers; heating units, including add-on heating stoves and heating stoves connected by flue pipe; fireplace screens, inserts, and grates; fireplace doors, if attached; liquid heating and cooking fuel tanks; TV antenna and complete rotor equipment; satellite dish and necessary accessories and complete rotor equipment; all support equipment for inground pools; screens and storm windows and doors; awnings; installed basketball backboard, pole and goal; mailbox; flagpole(s); fencing, invisible inground fencing and all related equipment, including collars; detached storage buildings; underground sprinkling, including the pump; installed outdoor grills; all plantings and bulbs; garage door opener and control(s); and any and all items and fixtures permanently affixed to the Property; **and also includes:**

Refrigerator, Range, dishwasher, microwave, dryer, washer

but does not include:

1373 Pine St, Muskegon, MI 49442
Subject Property Address/Description

03/10/2023
Date

Time

11. **Heating and Cooking Fuels:** Liquid heating and cooking fuels in tanks are included in the sale and will transfer to Buyer at time of possession unless usage is metered (in which case it is not included in the sale). Sellers are responsible for maintaining heating and cooking liquid fuels at an operational level and shall not permit fuels to fall below 10% in the tank(s) at the time of possession, except that the tank(s) may be empty only if now empty. Further, Seller is precluded from removing fuel from tank(s) other than what is expended through normal use. Exceptions:

n/a

12. **Assessments (choose one):**

If the Property is subject to any assessments,

☒ Seller shall pay the entire balance of any such assessments that are due and payable on or before the day of closing (regardless of any installment arrangements), except for any fees that are required to connect to public utilities.

☐ Seller shall pay all installments of such assessments that become due and payable on or before day of closing. Buyer shall assume and pay all other installments of such assessments.

Seller has an ongoing obligation through the Closing to disclose to the Buyer any known pending assessments, including, but not limited to, any mandatory utility connection requirements, and/or benefit charges, and condominium special assessments, that have not been previously disclosed in writing to Buyer.

13. **Property Taxes:** Seller will be responsible for any taxes billed prior to those addressed below. Buyer will be responsible for all taxes billed after those addressed below.

Buyer is also advised that the state equalized value of the Property, principal residence exemption information and other real property tax information is available from the appropriate local assessor's office. Buyer should not assume that Buyer's future tax bills on the Property will be the same as Seller's present tax bills. Under Michigan law, real property tax obligations can change significantly when property is transferred.

☐ No proration. (Choose one):

☐ Buyer ☐ Seller will pay taxes billed summer _____ (year);
☐ Buyer ☐ Seller will pay taxes billed winter _____ (year);

☒ Calendar Year Proration (all taxes billed or to be billed in the year of the closing). Calendar year tax levies will be estimated, if necessary, using the taxable value and the millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying for January 1 through the day before closing.

☐ Fiscal Year Proration - Taxes will be prorated as though they are paid in (choose one): ☐ advance. ☐ arrears.

Fiscal Year will be assumed to cover a 12-month period from date billed, and taxes will be prorated to the date of closing. Fiscal year tax levies will be estimated, if necessary, using the taxable value and millage rate(s) in effect on the day of closing, broken down to a per diem tax payment and prorated to the date of closing with Seller paying through the day before closing. Exceptions:

14. **Well/Septic:** Within ten (10) days after the Effective Date, (choose one) ☒ Seller or ☐ Buyer will arrange for, at their own expense, an inspection of the primary well used for human consumption (including a water quality test for coliform bacteria and nitrates) and septic systems in use on the Property. The inspection will be performed by a qualified inspector in a manner that meets county (or other local governmental authority, if applicable) protocol.

If any report discloses a condition unsatisfactory to Buyer, or doesn't meet county standards that are a condition of sale, Buyer may, within three (3) days after Buyer has received the report, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the well/septic as-is. Seller will respond in writing within three (3) days to Buyer's request. If Seller fails to respond or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer will have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate the contract, Buyer will proceed to closing according to the terms and conditions of this Agreement.

Other:

15. **Inspections & Investigations:**

Inspections: Buyer, or someone selected by Buyer, has the right to inspect the buildings, premises, components and systems, at Buyer's expense. Any damage, misuse, abuse, or neglect of any portion of the Property or premises as a result of inspections will be Buyer's responsibility and expense.

Investigations: It is Buyer's responsibility to investigate (i) whether the Property complies with applicable codes and local ordinances and whether the Property is zoned for Buyer's intended use; (ii) whether Buyer can obtain a homeowner's insurance policy for the Property at price and terms acceptable to Buyer; (iii) and whether or not the Property is in a flood zone.

All inspections and investigations will be completed within 5 days after the Effective Date. If the results of Buyer's inspections and investigations are not acceptable to Buyer, Buyer may, within the above referenced period, either (a) terminate this Agreement by written notice to Seller and receive a refund of Buyer's Earnest Money Deposit, or (b) make a written proposal to Seller to correct those unsatisfactory conditions, which proposal must be in the form of a proposed addendum and must be signed by Buyer in order for it to be effective. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have

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Time



Buyer's Initials



Seller's Initials

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accepted the Property as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Inspections & Investigations and will proceed to closing according to the terms and conditions of this Agreement.

☐ Buyer has waived all rights under this Inspections & Investigations paragraph.

Exceptions: none

16. **Municipal Compliances:** Seller will arrange and pay for current certificates of occupancy, sidewalk compliance, and smoke detector ordinances, if applicable.

17. **Title Insurance:** Seller agrees to convey marketable title to the Property subject to conditions, limitations, reservation of oil, gas and other mineral rights, existing zoning ordinances, and building and use restrictions and easements of record. An **expanded coverage** ALTA Homeowner's Policy of Title Insurance in the amount of the Purchase Price shall be ordered by Seller and furnished to Buyer at Seller's expense, and a commitment to issue a policy insuring marketable title vested in Buyer, including a real estate tax status report, will be made available to Buyer within **ten (10) days** after the Effective Date. If Buyer so chooses, or if an expanded policy is not applicable, then a **standard** ALTA Owners' Policy of Title Insurance shall be provided.

If Buyer objects to any conditions, Buyer may, within three (3) days of receipt of the Title Commitment, by written notice to Seller, either terminate this Agreement and receive a refund of Buyer's Earnest Money Deposit, or make a written proposal to Seller to correct those unsatisfactory conditions. If Buyer fails to make a written proposal within the above referenced time period, then Buyer will be deemed to have accepted the Title Commitment as-is. Seller may negotiate with Buyer, or by written notice to Buyer, accept Buyer's proposal or terminate this Agreement. If Seller fails to respond, or to arrive at a mutually agreeable resolution within three (3) days after Seller's receipt of Buyer's proposal, Buyer shall have three (3) days to provide written notice of termination of this Agreement and shall receive a refund of any applicable Earnest Money Deposit. If Buyer fails to terminate this Agreement within said three (3) day period, Buyer will be deemed to accept the Title Commitment as-is and will proceed to closing according to the terms and conditions of this Agreement. Exceptions:

none

18. **Property Survey:** Broker advises that Buyer should have a survey performed to satisfy Buyer as to the boundaries of the Property and the location of improvements thereon.

☐ Buyer or ☐ Seller (choose one) shall within ten (10) days of the Effective Date, order, at their expense, a boundary survey with iron corner stakes showing the location of the boundaries, improvements and easements in connection with the Property. Upon receipt of the survey, Buyer will have three (3) days to review the survey. If the survey shows any condition, in Buyer's sole discretion, which would interfere with Buyer's intended use of the Property, the marketability of the title, or zoning non-compliance, then Buyer may, within said three (3) day period, terminate this Agreement, in writing, and Buyer will receive a full refund of Buyer's Earnest Money Deposit.

☒ No survey. Buyer has waived all rights under this paragraph.

When closing occurs, Buyer shall be deemed to have accepted the boundaries of the Property and the location of such improvements thereon. Exceptions:

19. **Home Protection Plan:** Buyer and Seller have been informed that home protection plans may be available. Such plans may provide additional protection and benefit to the parties. Exceptions:

20. **Prorations:** Rent; association dues/fees, if any; insurance, if assigned; interest on any existing land contract, mortgage or lien assumed by Buyer; will all be adjusted to the date of closing. For the purposes of calculating prorations, it is presumed that Seller owns the Property through the day before closing.

21. **Closing:** If agreeable to Buyer and Seller, the sale will be closed as soon as closing documents are ready, but not later than 4/20/23. An additional period of fifteen (15) days will be allowed for closing to accommodate the correction of title defects or survey problems which can be readily corrected, or for delays in obtaining any lender required inspections/repairs. During this additional period, the closing will be held within 5 days after all parties have been notified that all necessary documents have been prepared. Buyer and Seller will each pay their title company closing fee, if applicable, **except in the case of VA financing where Seller will pay the entire closing fee.** Exceptions:

22. **Pre-Closing Walk-Through:** Buyer (choose one) ☒ reserves ☐ waives the right to conduct a final walk-through of the Property within three (3) days of the scheduled closing date. The purpose of the walk-through is to determine that the Property is in a substantially similar condition as of the Effective Date, any contractually agreed upon items have been fulfilled, and that any included personal property is still located at the Property. Buyer shall immediately report to Seller any objections to these conditions and Buyer's requested corrective action.

23. **Possession:** Seller will maintain the Property in its present condition until the completion of the closing of the sale. Possession to be delivered to Buyer, subject to rights of present tenants, if any.

☒ At the completion of the closing of the sale.

☐ At ☐ a.m. ☐ p.m. on the day **after** completion of the closing of the sale, during which time Seller

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Buyer's Initials



Seller's Initials

will have the privilege to occupy the Property and hereby agrees to pay Buyer \$_____ as an occupancy fee for this period payable at closing, WITHOUT PRORATION. Payment shall be made in the form of cash or certified funds.

If Seller fails to deliver possession to Buyer on the agreed date, Seller shall become a tenant at sufferance and shall pay to Buyer as liquidated damages \$_____200_____ per day plus all of the Buyer's actual reasonable attorney's fees incurred in removing the Seller from the Property.

If Seller occupies the Property after closing, Seller will pay all utilities during such occupancy. Buyer will maintain the structure and mechanical systems at the Property. However, any repairs or replacements necessitated by Seller's misuse, abuse, or neglect of any portion of the Property will be Seller's responsibility and expense.

On the agreed delivery date, Seller shall deliver the Property free of trash and debris and in broom-clean condition, shall remove all personal property (unless otherwise stated in this or an additional written agreement), shall make arrangements for final payment on all utilities, and shall deliver all keys to Buyer. Exceptions:

24. **Earnest Money Deposit:** For valuable consideration, Buyer gives Seller until _____ 5pm _____ (time) on _____ 03/13/2023 _____ (date), to deliver the written acceptance of this offer and agrees that this offer, when accepted by Seller, will constitute a binding Agreement between Buyer and Seller. An Earnest Money Deposit in the amount of \$_____ 500 _____ shall be submitted to _____ ATA National Title Group _____ (insert name of broker, title company, other) within 72 hours of the Effective Date of this Agreement, and shall be applied against the Purchase Price. If the Earnest Money Deposit is not received within 72 hours of the Effective Date or is returned for insufficient funds, Seller may terminate this Agreement until such time as the Earnest Money Deposit is received. If Seller terminates this Agreement under this provision, Seller waives any claim to the Earnest Money Deposit. If the sale is not closed due to a failure to satisfy a contingency for a reason other than the fault of Buyer, the Earnest Money Deposit shall be refunded to Buyer. If the sale is not closed as provided in this Agreement and Buyer and Seller do not agree to the disposition of the Earnest Money Deposit, then Buyer and Seller agree that the Broker holding the Earnest Money Deposit may notify Buyer and Seller, in writing, of Broker's intended disposition of the Earnest Money Deposit. If Buyer and Seller do not object to such disposition in writing within fifteen (15) days after the date of Broker's notice, they will be deemed to have agreed to Broker's proposed disposition; if either Buyer or Seller object and no mutually agreeable disposition can be negotiated, Broker may deposit the funds by interpleader with a court of proper jurisdiction or await further actions by Buyer and Seller. In the event of litigation involving the deposit, in whole or in part, either the Seller or the Buyer that is not the prevailing party, as determined by the court, will reimburse the other for reasonable attorneys' fees and expenses incurred in connection with the litigation, and will reimburse the Broker for any reasonable attorneys' fees and expenses incurred in connection with any interpleader action instituted. If the entity holding the Earnest Money Deposit is not the Broker, then to the extent that the terms of any escrow agreement conflict with this paragraph, then the terms and conditions of the escrow agreement shall control.

25. **Professional Advice:** Broker hereby advises Buyer and Seller to seek legal, tax, environmental and other appropriate professional advice relating to this transaction. Broker does not make any representations or warranties with respect to the advisability of, or the legal effect of this transaction. Buyer further acknowledges that REALTOR® above named in the Agreement hereby recommends to Buyer that an attorney be retained by Buyer to pass upon the marketability of the title and to ascertain that the required details of the sale are adhered to before the transaction is consummated. Buyer agrees that Buyer is not relying on any representation or statement made by Seller or any real estate salesperson (whether intentionally or negligently) regarding any aspect of the Property or this sale transaction, except as may be expressly set forth in this Agreement, a written amendment to this Agreement, or a disclosure statement separately signed by Seller.

26. **Disclosure of Information:** Buyer and Seller acknowledge and agree that the Purchase Price, terms, and other details with respect to this transaction (when closed) are not confidential, will be disclosed to REALTORS® who participate in the applicable Multiple Listing Service, and may otherwise be used and/or published by that Multiple Listing Service in the ordinary course of its business.

27. **Other Provisions:**

New build walk through and repairs at least 2 weeks before closing

28. **Mergers and Integrations:** This Agreement is the final expression of the complete agreement of Buyer and Seller, and there are no oral agreements existing between Buyer and Seller relating to this transaction. This Agreement may be amended only in writing signed by Buyer and Seller and attached to this Agreement.

29. **Fax/Electronic Distribution and Electronic Signatures:** Buyer and Seller agree that any signed copy of this Agreement, and any amendments or addendums related to this transaction, transmitted by facsimile or other electronic means shall be competent evidence of its contents to the same effect as an original signed copy. Buyer and Seller further agree that an electronic signature is the legal equivalent of a manual or handwritten signature, and consent to use of electronic signatures. Buyer and Seller agree that any notice(s) required or permitted under this Agreement may also be transmitted by facsimile or other electronic means.

30. **Wire Fraud:** Seller and Buyer are advised that wire fraud is an increasingly common problem. If you receive any electronic

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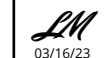
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Time



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Buyer's Initials



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Seller's Initials

communication directing you to transfer funds or provide nonpublic personal information (such as social security numbers, drivers' license numbers, wire instructions, bank account numbers, etc.), **even if that electronic communication appears to be from the Broker, Title Company, or Lender, DO NOT** reply until you have verified the authenticity of the email by direct communication with Broker, Title Company, or Lender. **DO NOT** use telephone numbers provided in the email. Such requests may be part of a scheme to steal funds or use your identity.

31. **Buyer's Approval and Acknowledgment:** Buyer approves the terms of this offer and acknowledges receipt of a copy of this offer.

Buyer 1 Address: Lindsey Peacock  **Buyer**
 Buyer 1 Phone: (Res.) _____ (Bus.) _____ Lindsey Peacock
 Print name as you want it to appear on documents.
 Buyer 2 Address: _____  **Buyer**
 Buyer 2 Phone: (Res.) _____ (Bus.) _____
 Print name as you want it to appear on documents.

32. **Seller's Response:** The above offer is approved: ☒ As written. ☐ As written except:

Counteroffer, if any, expires _____, at _____ (time). Seller has the right to withdraw this counteroffer and to accept other offers until Seller or Seller's Agent has received notice of Buyer's acceptance.

33. **Certification of Previous Disclosure Statement:** Seller certifies to Buyer that the Property is currently in the same condition as disclosed in the Seller's Disclosure Statement dated _____ (choose one): ☐ Yes ☐ No.
 Seller agrees to inform Buyer in writing of any changes in the content of the disclosure statement prior to closing.

34. **Notice to Seller:** Seller understands that consummation of the sale or transfer of the Property described in this Agreement will not relieve Seller of any liability that Seller may have under the mortgages to which the Property is subject, unless otherwise agreed to by the lender or required by law or regulation. Buyer and Seller are advised that a Notice to Seller & Buyer of Underlying Mortgage form is available from the respective agents via the West Michigan REALTOR® Boards.

35. **Listing Office Address** 3265 Walker Ave NW, Suite D, Grand Rapids, MI Listing Broker License # 6506015435
Listing Agent Name: Mariana Murillo VanDam Listing Agent License # 6506015435

36. **Seller's Approval and Acknowledgment:** Seller approves the terms of this Agreement and acknowledges receipt of a copy. If Seller's response occurs after Buyer's offer expires, then Seller's response is considered a counteroffer and Buyer's acceptance is required below.

X (Seller's Signature, Date, Time): LeighAnn Mikesell  
 LeighAnn Mikesell Is Seller a U.S. Citizen or Resident Alien? ☒ Yes ☐ No*
 Print name as you want it to appear on documents.

X (Seller's Signature, Date, Time): _____

 Print name as you want it to appear on documents. Is Seller a U.S. Citizen or Resident Alien? ☐ Yes ☐ No*

Seller's Address: _____ Seller's Phone (Res.) _____ (Bus.) _____
 * If Seller(s) is not a U.S. Citizen or Resident Alien, there may be tax implications and Buyer and Seller are advised to seek professional advice.

37. **Buyer's Receipt/Acceptance:** Buyer acknowledges receipt of Seller's response to Buyer's offer. In the event Seller's response constitutes a counteroffer, Buyer accepts said counteroffer. All other terms and conditions in the offer remain unchanged.

X (Buyer's Signature, Date, Time): _____
 X (Buyer's Signature, Date, Time): _____

38. **Seller's Receipt:** Seller acknowledges receipt of Buyer's acceptance of counter offer.

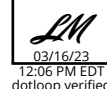
X (Seller's Signature, Date, Time): _____
 X (Seller's Signature, Date, Time): _____

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 Date Time



Buyer's Initials



Seller's Initials

WATCH MUSKEGON

Agenda Item Review Form

Muskegon City Commission

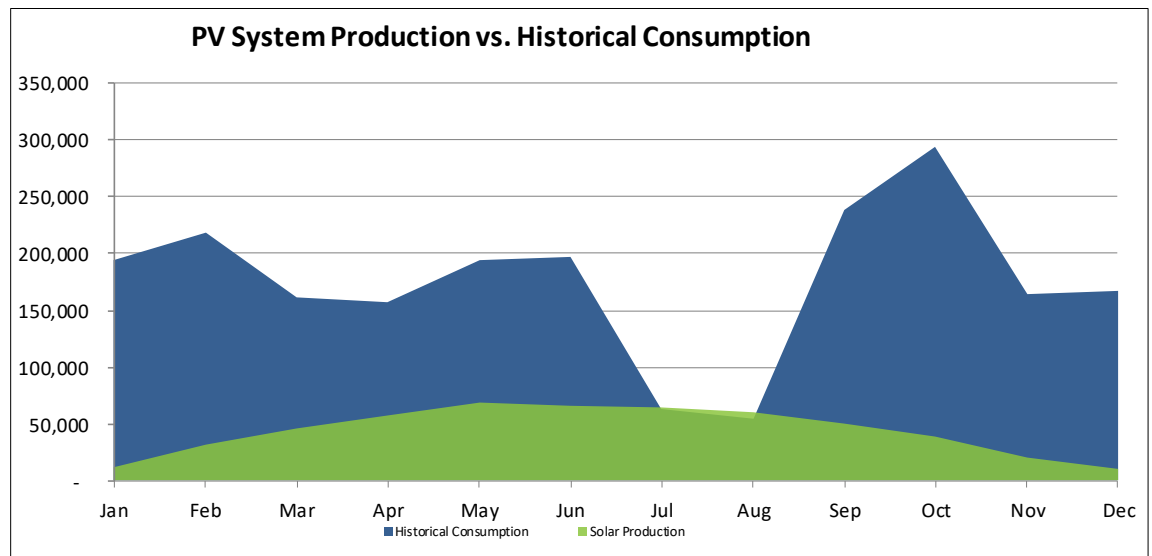
Regular Meeting Date: March 28, 2023	Title: Arena Solar Power Purchase Agreement	
Submitted By: Dan VanderHeide	Department: DPW and Arena	
Brief Summary: Charthouse Energy proposes, with financial backing by Sunwealth, LLC, to place solar panels on the roof the Trinity Health Arena and sell the energy to the City under a Power Purchase Agreement (PPA) to reduce the City's energy costs over the 25 year life of the system.		
Detailed Summary & Background: This item was discussed at the July, 2020 work session and the April 27th, 2021 regular meeting before being approved in a prior format at the June 8th, 2021 meeting. Due to tax issues, it was then rescinded at the June 14th, 2022 meeting. The tax issues have been resolved due to additional incentives being available under the IIJA, so a new financier (Sunwealth, LLC) has agreed to take the project on. The updated proposal was reviewed with the Commission at the February 13, 2023 Work Session meeting. After positive feedback and a legal review of the Power Purchase Agreement (PPA) by Matthew Greenberg of Miller Canfield (at the recommendation of City Attorney John Schrier, as Mr. Greenberg assisted the City in developing the 2021 rescinded agreement), staff is pleased to present the proposal and PPA for formal adoption by the City Commission. Both are attached.		
Goal/Focus Area/Action Item Addressed: Sustainability in Financial Practices & Infrastructure		
Amount Requested: \$0	Amount Budgeted: \$0	
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A	
Recommended Motion: Enter into a 25 Year Power Purchase Agreement contract with Sunwealth, LLC to purchase power at a reduced cost from a solar generating facility installed on the Trinity Health Arena roof, and authorize the Manager to sign.		
Approvals: Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☒ Communication ☐ Legal Review ☒		Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		



Trinity Health Arena 449kW Rooftop Solar Energy Proposal

Chart House Energy (CHE) is excited for the opportunity to partner with The City of Muskegon Trinity Health Arena in pursuing the installation and implementation of a solar energy production array. Solar PV projects provide power for the building, offsetting both energy usage and some peak power usage. The system consists of solar panels, non-penetrating racking, inverters, and wiring. They can also include roof membrane (solar platform), and electrical infrastructure related to the installation of the system. The proposed system details are:

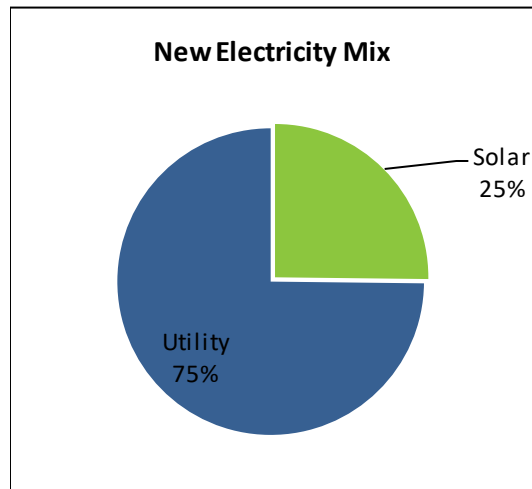
- Total **449kW** roof mount solar system utilizing approximately **1,152 solar panels**.
- LED lighting replacement can be added to the project for additional savings.
- The total investment to be made by an investor or Chart House Energy is \$1,164,142.
- **Clean, renewable solar energy will provide nearly 25% of The City of Muskegon Trinity Health Arena's electricity at ZERO UPFRONT COST to The City of Muskegon Trinity Health Arena.**
- **Partnering with Chart House Energy on this solar proposal means that The City of Muskegon Trinity Health Arena will create job training for local individuals** to help with project installation.
- Living wage jobs created in the construction field.
- Environmental stewardship and marketing to surrounding communities and state representatives.
- CHE designs, builds, installs, owns, monetizes the tax benefits (unless The City of Muskegon Trinity Health Arena has a private investor), operates, and maintains the roof and solar system. All panels and parts will be American-made and Michigan-made where possible. All engineering and labor will come from Michigan and be as local as possible.
- Installation of solar will demonstrate The City of Muskegon Trinity Health Arena's dedication to our community and clean, renewable solar energy.
- In this option, The City of Muskegon Trinity Health Arena has no responsibility for operations and maintenance of the solar system and if there ever is a need to maintain the roof CHE will remove panels at no cost.
- **Over \$645,000 of Total Electric Savings over 25 years from Solar Installation with ZERO OUT OF POCKET COST to The City of Muskegon Trinity Health Arena.**
- **Chart House Energy will guarantee and pay any difference in cost if the PPA rate and costs exceed the utility savings.**
- **There is no PPA cost escalation in the PPA rate, protecting the City against fluctuations in utility rates.**



Community Impacts for The City of Muskegon Trinity Health Arena:

We believe installing solar in communities offers more than just emission free power production. It improves communities, one job at a time. We use solar to help create permanent jobs. As part of our project development, we will work with The City of Muskegon Trinity Health Arena to hire local unemployed or under-employed people. Chart House Energy will train them to be solar installers and once the projects are complete, The City of Muskegon Trinity Health Arena can help them get jobs in the solar industry or other construction jobs. Additionally, solar will add a marketing potential for The City of Muskegon Trinity Health Arena by showing their commitment to clean and renewable energy.

Solar installation will bring further environmental benefits to The City of Muskegon Trinity Health Arena. We partner with SolarEdge, a solar monitoring system which tracks your reduction in emissions and accumulated total solar energy produced. It also tracks The City of Muskegon Trinity Health Arena's economic and environmental savings from the system's production. As some consider environmental values a large motivator for installing solar PV, The City of Muskegon Trinity Health Arena's decision to move forward with solar installation will add to the overall community impact. We are excited to partner with The City of Muskegon Trinity Health Arena on this next step. Installing solar PV will provide invaluable benefits to The City of Muskegon Trinity Health Arena and we believe will be lifechanging for community members.



CUSTOMER SAVINGS SUMMARY – PPA

Trinity Health Arena

449.3 kW Solar project



Investment

Total Project \$ 1,164,142

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

2023	\$	58,004	\$	0.1130	\$	0.1150	/kWh
				3.2%		0.0%	Annual Index
2024		\$	59,860	\$	60,930	\$	(1,070)
2025		\$	61,480	\$	60,638	\$	842
2026		\$	63,142	\$	60,347	\$	2,795
2027		\$	64,850	\$	60,057	\$	4,793
2028		\$	66,604	\$	59,769	\$	6,835
2029		\$	68,405	\$	59,482	\$	8,923
2030		\$	70,256	\$	59,197	\$	11,059
2031		\$	72,156	\$	58,912	\$	13,243
2032		\$	74,107	\$	58,630	\$	15,478
2033		\$	76,112	\$	58,348	\$	17,763
2034		\$	78,170	\$	58,068	\$	20,102
2035		\$	80,284	\$	57,789	\$	22,495
2036		\$	82,456	\$	57,512	\$	24,944
2037		\$	84,686	\$	57,236	\$	27,450
2038		\$	86,976	\$	56,961	\$	30,015
2039		\$	89,329	\$	56,688	\$	32,641
2040		\$	91,745	\$	56,416	\$	35,329
2041		\$	94,226	\$	56,145	\$	38,081
2042		\$	96,775	\$	55,875	\$	40,899
2043		\$	99,392	\$	55,607	\$	43,785
2044		\$	102,080	\$	55,340	\$	46,740
2045		\$	104,841	\$	55,075	\$	49,766
2046		\$	107,677	\$	54,810	\$	52,866
2047		\$	110,589	\$	54,547	\$	56,042
2048		\$	113,580	\$	54,285	\$	59,295

\$ 661,111 25 year savings

Chart House Energy will guarantee and pay any difference in cost if the PPA rate and costs exceed the utility savings.

Power Purchase Agreement

Sunwealth LLC

And

City of Muskegon

2067 Massachusetts Avenue, Suite 540

Cambridge, MA, 02140

Main: 617-752-7322

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of _____ [], 2023 (the "Effective Date") by and between **Sunwealth LLC**, a Delaware limited liability company ("Seller"), and the **City of Muskegon**, Michigan ("Purchaser"). 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 City of Muskegon, Michigan ("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"). 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 as of the date that the Additional Term commences (the "Utility Rate"). 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;
- (b) the termination of a Lease by its terms and conditions for any reason prior to the Expiration Date; 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.

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 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 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 necessary 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 ninety (90) 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 (an "Unexcused Outage") then, beginning on the 91st 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. 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 attributed 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 intentional action or suffer any omission that would 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 when engaging in any matter that could reasonable 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 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.

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 December 31, 2023 (the "Target COD"). In the event that the Systems has not achieved Commercial Operation Dates on or before the Target COD, 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 Target COD date until the Commercial Operation Date for the subject System. The Parties may agree to amend this Agreement to revise the Target COD (the "Revised Target COD"). In the event that the System has not achieved the Commercial Operation Date on or before the Revised Target COD, the Parties may, in their discretion, negotiate to amend this Agreement to further revise the Target COD, along with any other provisions of this Agreement affected by the failure to achieve the Commercial Operation Date on or before the Revised Target 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 Site and System Maintenance and Repair. Site System Maintenance and Repair obligations are detailed in the Site Lease.

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 fifteen (15) 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 3.2. 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 forty-five (45) basis after receipt of each invoice. Payments not made within 45 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. 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 or 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 Accept 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 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 four (4) four (4) hour curtailments 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.

6.4 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 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.

8.3 System Casualty.

- (a) If the System is materially damaged or destroyed prior to the fifteenth (15th) anniversary of the Commercial Operation Date (as defined in this Agreement), the Seller shall be obligated to repair or replace the System to produce Electric Output in substantially the same amount and quality as produced by the System immediately before the damage or destruction.
- (b) If the System is materially damaged or destroyed on or after the fifteenth (15th) anniversary of the Commercial Operation Date (as defined in this Agreement), then Seller may, but shall not be obligated to, repair or replace the System to produce electricity in substantially the same amount and quality as produced by the System immediately before the damage or destruction. If Seller elects not to repair or replace the System, then this Lease shall terminate in part with respect to such affected System or portion thereof. If Seller does not repair or replace the System, or portion thereof, it shall remove what remains of the System and restore the Premises to a

condition that is reasonable similar to the condition prior to System installation.

- (c) 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 8.3.
- (d) Seller shall under all circumstances be entitled to all insurance proceeds with respect to the System and Purchaser shall under all circumstances be entitled to all insurance proceeds with respect to the Premises.

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; and
- (f) 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 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 Lease 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. [NTD – adjust for unaudited or public entity financial reporting]

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.

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, 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 public entity financial reporting 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 (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 may request 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.
- (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 furnished by Seller in connection with 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; (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. Upon termination of the Agreement by Seller, Purchaser shall pay a Termination Payment to Seller equal to the amount set forth in the table attached hereto as Exhibit F for the applicable contract year (the "PPA Damages"). Notwithstanding any provision in this Agreement to the contrary, if no notice of dispute has been issued within thirty (30) 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 or should have known 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. (REMAINS SUBJECT TO APPROVAL BY THE CITY OF MUSKEGON)

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 OR TO BE MADE BY PURCHASER TO SELLER PURSUANT TO SECTION 4 OF THIS AGREEMENT CALCULATED. (REMAINS SUBJECT TO APPROVAL BY THE CITY OF MUSKEGON – THIS INCLUDES NO LIMITATION TO PURCHASER LIABILITY. SUGGESTION OF LIMITING PURCHASE LIABILITY TO THE TERMINATION PAYMENTS INCLUDED AS APPENDIX F.)

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. Seller agrees to deliver to each financing party a copy of all notices the Seller delivers to Purchaser 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:

Sunwealth LLC
2067 Massachusetts Avenue, Suite 540
Cambridge, Massachusetts, 02140
Attention: Jonathan Abe, CEO
Phone: 617-752-7322
Email: projects@sunwealth.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, employees, agents and representatives (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 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, 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 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 6011 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. Seller shall be exclusively responsible for federal, state and local ad valorem property, sales, use, excise, transaction tax or any income taxes imposed on Seller's revenues due to the sale of Energy or construction or ownership of the System(s) under this Agreement. Purchaser shall not be responsible for any taxes if imposed by operation of MCL 380.1141. 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 3.2.

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.

[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

Sunwealth LLC

PURCHASER

City of Muskegon

By: _____
Name: Jonathan Abe
Title: CEO

By: _____
Name: Jonathan Seyferth
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 **Error! Reference source not found.**

“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 3.1(c).

“Exercise Period” has the meaning set forth in Section 7.2.

“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 in respect of Energy produced by the System and allocated to Purchaser under this Agreement.

“Net Metering Rules” means the rules established pursuant to Ohio 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 7.3.

“Utility” means Consumers Energy.

EXHIBIT B

DESCRIPTION OF THE SYSTEM

Description of Site:

The real property located at City of Muskegon.

Description of System:

Equipment Name And Location	Manufacturer/ Model #	Specifications	Description
Trinity 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.

EXHIBIT F

PURCHASER TERMINATION PAYMENT

Year	Termination Payment
Year 1	\$1,596,805
Year 2	\$1,448,476
Year 3	\$1,287,769
Year 4	\$1,126,514
Year 5	\$964,761
Year 6	\$480,361
Year 7	\$464,631
Year 8	\$445,029
Year 9	\$424,846
Year 10	\$404,057
Year 11	\$382,655
Year 12	\$360,569
Year 13	\$341,945
Year 14	\$329,216
Year 15	\$311,473
Year 16	\$293,178
Year 17	\$269,608
Year 18	\$244,487
Year 19	\$218,677
Year 20	\$192,071
Year 21	\$164,593
Year 22	\$136,204
Year 23	\$106,872
Year 24	\$80,627
Year 25	\$54,934

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023	Title: Laketon-Lakeshore DNR Trust Fund Grant
Submitted By: Dan VanderHeide	Department: Public Works
Brief Summary: The City intends to apply for MDNR Trust Fund grants for the Laketon-Lakeshore Trail Connector and would like public feedback on the project and application.	
Detailed Summary & Background: Two grants will be submitted for the project, one for the portion from Laketon to Apple and one for the portion from Apple to Shoreline, in order to maximize the potential for funding. This is based on recommendations from the West Michigan Trails & Greenways Coalition and Prein & Newhof, who have helped the City with an application for MDOT Transportation Alternatives Program (TAP) funding for the trail. The DNR Trust Fund grants and the MDOT TAP grant funds are able to match each other, potentially reducing the City's contribution.	
Goal/Focus Area/Action Item Addressed: <i>Goal 1 Key Focus Area:</i> Public transportation options (tram, scooters, trolley, biking network)	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Authorize staff to apply for MDNR Trust Fund grants for the Laketon-Lakeshore Trail Connector.	
Approvals: Immediate Division Head ☒ Information Technology ☐ Other Division Heads ☐ Communication ☒	Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:	

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023	Title: Portable Restroom Service Extension	
Submitted By: Dan VanderHeide	Department: DPW	
Brief Summary: Staff requests approval for a one-year extension to a three-year contract from 2020 with Kerkstra Portable Restroom Service for the 2023 season.		
Detailed Summary & Background: Staff reached out to other area companies seeking to determine the market, and found that Kerkstra Portable Restroom Service is the only company able and willing to service Muskegon for the 2023 season. Kerkstra has offered updated pricing, which staff has confirmed is still well below the market rates offered by the competitors, again none of which are even able or willing to provide the number of units required by the City. Staff plans to re-bid a three-year contract in fall of 2023 with hopes the market will be more open to and supportive of providing portable restroom service to the Muskegon market. The majority of cost is from the Parks budget, however the boat launch ramps, special events such as Taste of Muskegon and the fireworks, the farmers market and the Western Market all use these services as well.		
Goal/Focus Area/Action Item Addressed: Enhanced Parks & Recreation Department and Services		
Amount Requested: \$30,000	Amount Budgeted: \$15,000 (Parks) \$15,000 (Other)	
Fund(s) or Account(s): 101-770 and Various	Fund(s) or Account(s): 101-770 and Various	
Recommended Motion: Authorize staff to enter into a one-year extension of the City's contract with Kerkstra Portable Restroom Service for the 2023 season.		
Approvals: Immediate Division Head ☒ Other Division Heads ☒	Legal Review ☐ Information Technology ☐ Communication ☐	Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:		

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)724-4371

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



March 13th, 2023

Mr. Brian Van Rhee
Kerkstra Portable Restroom Services Inc.
P.O. Box 284
Hudsonville, MI 49426

Re: Temporary Portable Toilet Services Agreement Extension

Dear Mr. Van Rhee:

The City of Muskegon hereby requests that our contract be extended to Friday, February 23rd, 2024. The proposed budget for the extension period will be as listed in the previous contract at the discretion of the city, however, within this extension we understand an increase in pricing is required. We have agreed this be taken into consideration with this extension.

- The extension is proposed based on the terms in the attached document. Services include unit delivery, setting, cleaning, and removal.
- Trash found on the inside of the units will be the responsibility of the portable toilet service to throw in nearby trash receptacles.
- The City intends to solicit bids for a new contract in the fall of 2023.

Thank you for your consideration of this request.

By

The City of Muskegon

Dan VanderHeide, DPW Director

Date

And

Kerkstra Portable Restroom Service, Inc.

Brian Van Rhee

Date

cc: Kyle Karczewski, Parks & Recreation Director
Matt Schwemin, Parks Supervisor

Department of Public Works & Utilities, 1350 E. Keating Avenue, Muskegon, MI 49442

<http://www.shorelinecity.com>

Kerkstra

Portable Restroom Service INC.



P.O. Box 284
Hudsonville, MI 49426
Phone: 616-662-2677 Fax: 616-662-2678
Main Office: Hudsonville
Satellite Locations: Belding, & Muskegon

VISIT OUR WEBSITE
WWW.KERKSTRASERVICES.COM

EMAIL ADDRESS
INFO@KERKSTRASERVICES.COM

Customer: City of Muskegon
Matt Schwemin
Matt.schwemin@shorelinecity.com

March 14, 2023
231-375-9940

Kerkstra Portable Restroom Service, Inc. would like to thank you for the opportunity to bid for your portable restroom needs.

All prices stated will be honored until February 29, 2024, when Kerkstra Portable Restroom Service, Inc is exclusively used for your portable restroom needs.

Seasonal Units

Standard Portable Restrooms at \$80 each

ADA Handicap Portable Restrooms at \$150 each

Additional cleanings at \$20 per unit per service on route day M-F business hours

Additional cleanings on non-route day at \$75 per unit per service M-F business hours

Price based on 4-week billing cycle.

Price includes delivery, pickup, hand sanitizer, toilet paper and once a week cleaning.

Weekend/Special Event Units

Standard Portable Restrooms at \$80 each

ADA Handicap Portable Restrooms at \$150 each

Additional cleanings after business hours M-F at \$75 per unit per service plus \$100 service fee per day

****SEASONAL UNITS ON WEEKLY SERVICE ARE NOT CONSIDERED EVENT/WEEKEND UNITS**

All portable restrooms cleaned by Kerkstra Portable Restroom Service, Inc will be pumped and hauled under our State issued Septage Haulers License which is required by Michigan DEQ and Federal EPA regulations. All waste is disposed of at a licensed wastewater treatment plant.

Thank you,

Kerkstra Portable Restroom Service, Inc.

If you agree to the above contract and terms, please sign, date, and return to our office by fax, mail or email.

SIGNATURE: _____ DATE _____

If quote is accepted, please contact us with all billing information. Thank you!

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023	Title: CCTV Services for Sewer Mains
Submitted By: Dan VanderHeide	Department: Public Works
Brief Summary: Staff requests award of a three-year contract to Rogue Industrial Services for cleaning and televising services in the City's sanitary and storm sewer systems.	
Detailed Summary & Background: Staff issued a public bid for sewer cleaning and televising services to supplement staff capacity on complex and/or large televising projects. In 2023, this contract will be used to televise the sewers in Apple Avenue in advance of MDOT's fiscal year 2026 reconstruction project to assist staff when deciding which sewers may need repairs or replacement in advance of or as a part of the MDOT project. In future years, staff will use this contract for televising of sewers when needed in large sections of the City or on a tight deadline, such as for Clean Water State Revolving Fund projects. Rogue Industrial Services has performed work for many West Michigan communities as shown in their attached proposal, and is recommended based on their work history and their low bid.	
Goal/Focus Area/Action Item Addressed: Decrease infrastructure burden on residents	
Amount Requested: \$79,109 (Three Years)	Amount Budgeted: \$25,000 (FY23)
Fund(s) or Account(s): 590 (Sewer) 202 (Highway)	Fund(s) or Account(s): 590 (Sewer) 202 (Highway)
Recommended Motion: Authorize staff to enter into a three-year contract with Rogue Industrial Services for cleaning and televising service in the City's sanitary and storm sewer systems.	
Approvals: Immediate Division Head ☒ Legal Review ☐ Other Division Heads ☐ Information Technology ☐ Communication ☐	Guest(s) Invited / Presenting Yes ☐ No ☒
For City Clerk Use Only: Commission Action:	

COST PROPOSAL	
Apple Ave Project Area – SANITARY	
<i>Diameter (in)</i>	<i>Length (ft)</i>
8	1,690
10	6,444
12	2,909
21	993
24	391
27	6
30	10
36	733
Total	13,177
Apple Avenue - Muskegon Owned Storm Sewer	
<i>Diameter</i>	<i>Length (ft)</i>
8 inch	129
10 inch	31
12 inch	153
18 inch	110
48 inch	125
54 inch	413
60 inch	289
Total	1,250

Bid Opening 2/28/23 2:00pm

National Power Rodding			Rogue Industrial Services		Plummers Environmental Services		PipeTEK Infrastructure Services	
Unit Price	Cost		Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
\$ 12.65	\$21,378.50		\$ 6.00	\$10,140.00	\$ 5.40	\$9,126.00	\$ 5.00	\$8,450.00
\$ 12.65	\$81,516.60		\$ 6.00	\$38,664.00	\$ 5.40	\$34,797.60	\$ 5.00	\$32,220.00
\$ 12.65	\$36,798.85		\$ 6.00	\$17,454.00	\$ 5.40	\$15,708.60	\$ 5.00	\$14,545.00
\$ 15.80	\$15,689.40		\$ 6.00	\$5,958.00	\$ 10.60	\$10,525.80	\$ 8.00	\$7,944.00
\$ 18.95	\$7,409.45		\$ 7.00	\$2,737.00	\$ 10.60	\$4,144.60	\$ 8.00	\$3,128.00
\$ 25.00	\$150.00		\$ 8.00	\$48.00	\$ 10.60	\$63.60	\$ 50.00	\$300.00
\$ 25.00	\$250.00		\$ 1.00	\$10.00	\$ 10.60	\$106.00	\$ 50.00	\$500.00
\$ 25.00	\$18,325.00		\$ 1.00	\$733.00	\$ 10.60	\$7,769.80	\$ 10.00	\$7,330.00
Total	\$181,517.80		Total	\$75,744.00	Total	\$82,242.00	Total	\$74,417.00
\$ 12.65	\$1,631.85		\$ 6.00	\$774.00	\$ 6.40	\$825.60	\$ 5.00	\$645.00
\$ 12.65	\$392.15		\$ 6.00	\$186.00	\$ 6.40	\$198.40	\$ 10.00	\$310.00
\$ 12.65	\$1,935.45		\$ 6.00	\$918.00	\$ 6.40	\$979.20	\$ 5.00	\$765.00
\$ 14.10	\$1,551.00		\$ 6.00	\$660.00	\$ 7.50	\$825.00	\$ 5.00	\$550.00
\$ 38.60	\$4,825.00		\$ 1.00	\$125.00	\$ 20.00	\$2,500.00	\$ 15.00	\$1,875.00
\$ 39.75	\$16,416.75		\$ 1.00	\$413.00	\$ 20.00	\$8,260.00	\$ 15.00	\$6,195.00
\$ 40.00	\$11,560.00		\$ 1.00	\$289.00	\$ 20.00	\$5,780.00	\$ 15.00	\$4,335.00
Total	\$38,312.20		Total	\$3,365.00	Total	\$19,368.20	Total	\$14,675.00
TOTAL BID AMOUNT:		\$219,830.00	\$79,109.00		\$101,610.20		\$89,092.00	

COST PROPOSAL

RATES FOR WORK

Apple Ave Project Area – SANITARY			
<i>Diameter (in)</i>	<i>Length (ft)</i>	<i>Unit price (bid amount)</i>	<i>total cost</i>
8	1,690	\$6.00	\$10,140.00
10	6,444	\$6.00	\$38,664.00
12	2,909	\$6.00	\$17,454.00
21	993	\$6.00	\$5,958.00
24	391	\$7.00	\$2,737.00
27	6	\$8.00	\$48.00
30	10	\$1.00	\$10.00
36	733	\$1.00	\$733.00
Total	13,177		

Apple Avenue - Muskegon Owned Storm Sewer			
<i>Diameter</i>	<i>Length (ft)</i>	<i>Unit Price (bid)</i>	<i>Cost</i>
8 inch	129	\$6.00	\$744.00
10 inch	31	\$6.00	\$186.00
12 inch	153	\$6.00	\$918.00
18 inch	110	\$6.00	\$660.00
48 inch	125	\$1.00	\$125.00
54 inch	413	\$1.00	\$413.00
60 inch	289	\$1.00	\$289.00
Total	1,250		

TOTAL BID AMOUNT (sanitary + storm) = \$ \$79,109.00

ROGUE INDUSTRIAL SERVICES, LLC EQUIPMENT LIST

Equipment ID	Term	VIN	Year	Make / Model	Module Serial	Module Manufacturer	Capacity	Water Capacity	Engine	Aux Engine	Transmission
Class B											
G1-13	Owned	1NKDL70XXDJ343167	2013	Kenworth T800	12-09G-5556	Vactor Guzzler	18 Yard	0	ISX 11.9	Null	Eaton Fuller 10
GX2-12	Owned	1NDKL70X5DJ348423	2012	Kenworth T800	12-10G-5612	Vactor Guzzcavator	18 Yard	1300 Gallons	ISX 11.9	Null	Eaton Fuller 10
V1540-04	Owned	2FZHATDC24AN01619	2004	Sterling	04-07V-9035	Vactor 2115	15 Yard	1800 Gallons	CAT C7	JD 6.8	Allison Automatic
V18283-18	Owned	1NKZL40X7JJ214593	2007	Sterling	08-03V-11053	Vactor 2115	15 Yard	1800 Gallons	Cat C7	Null	Allison Automatic
V9331-06	Owned	1FVHC3DC46HW89331	2006	Freightliner M2-106	06-04V-9831	Vactor 2112	12 Yard	1800 Gallons	CAT C7	JD 6.8	Allison Automatic
S1-02	Owned	49HAADB12DK07153	2002	Sterling SC-8000	A7000	Schwarze A-7000	8.4 Yard	450 Gallons	Cummins 5.9	JD 4040ST	Allison Automatic
S2-22	Term lease	1FVACWFC6NHNF3835	2022	Freightliner M2-106	AS16	Vacall AS16	16 Yard	600 Gallons	ISL 7.0	Null	Allison Automatic
Support Vehicles											
P1-06	Owned	1FDAF56P56EA71884	2006	Ford F550	NULL		Box 12' / Lift Gate	0	Ford 6.0	Null	Automatic 5R110W
P2-12	Owned	1FT7W2BT4CEA55252	2012	Ford F250	NULL		6.5	0	Ford 6.7	Null	Automatic 6r140
P3-18	Owned	1FT7W2BT2JEB11511	2018	Ford F250	NULL		6.5	0	Ford 6.7	Null	Automatic 6r140
P4-02	Owned	1GNEC13ZX2J322758	2002	Chevy Tahoe	NULL		NULL	0	GM 5.3	Null	Automatic 4L60E
Class C											
MT1-15	Owned	1FDWE3FL9FDA14278	2015	Ford E-450	CUES	Cues Mainline	Box 12'	25 Gallons	Ford 5.4	Onan 6500W	Automatic 5R110W
MT2-12	Owned		2012	Chevy Kodiak 5500	CUES	Cues Mainline / Lat.	Box 18'	25 gallons	GM 6.6	Inverter	Automatic Allison
Inland Marine Equipment											
E1	Owned	Easement Machine	2014	Jetaway	SECA		600' Hose	0	Briggs		
E2	Owned	Easement Machine	2013	Jetaway	seca		600' Hose	0	Onan		

APPLICABLE EXPERIENCE

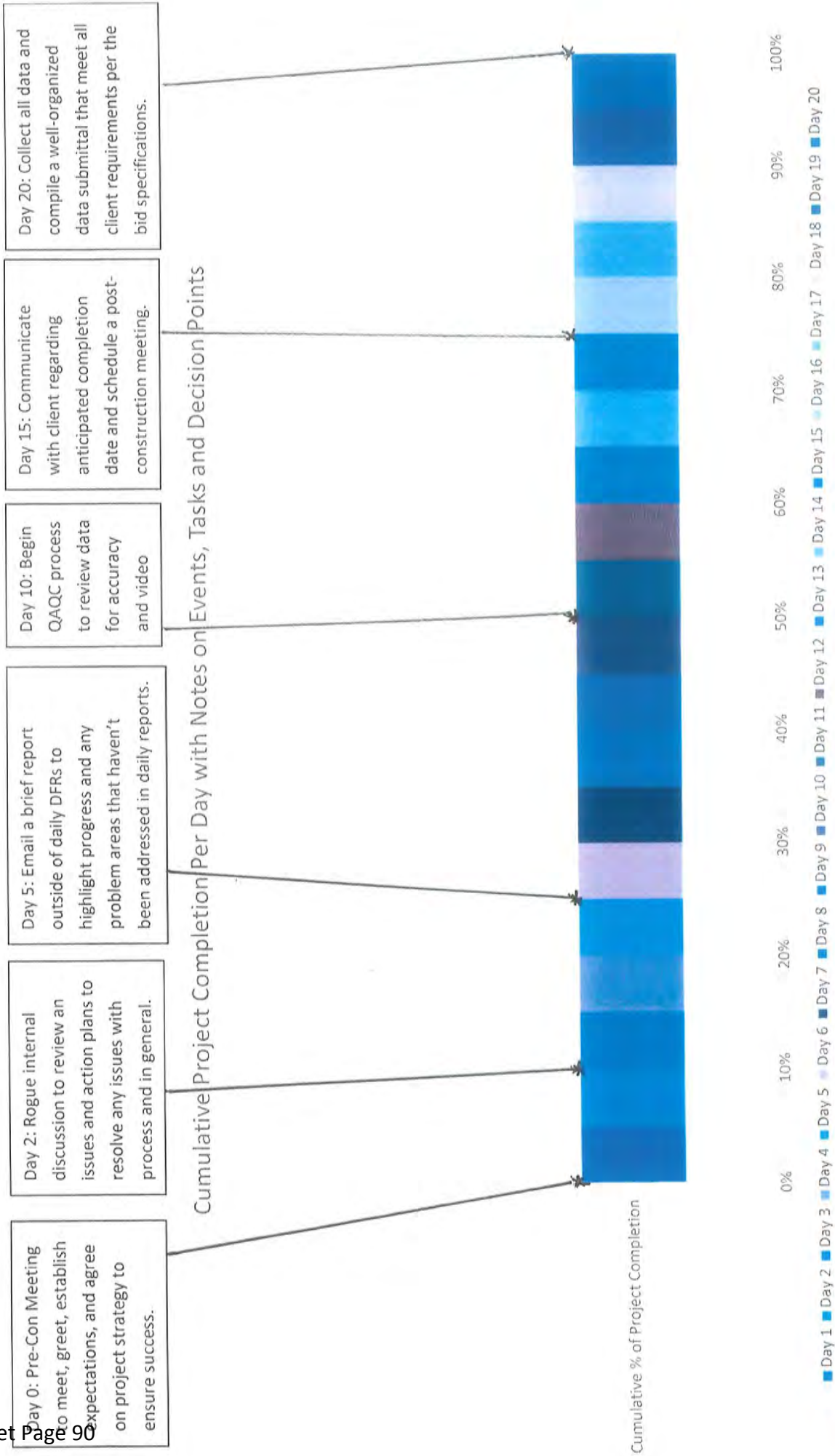
In the past five years, Rogue Industrial Services has completed various jobs cleaning and televising both storm and sanitary sewer systems. The jobs we have completed have ranged from a single pipe to over 150,000 linear feet of pipe. We have successfully cleaned and televised pipes ranging in size from 3" to 120". We have attached a reference list for your review. We encourage your team to reach out to our list of satisfied clients. The credit for the success of these projects and the satisfaction of our clients is entirely due to the personnel on Rogue's team. We are staffed with experienced combination sewer truck operators and tv truck operators. We have a culture of taking care of each other so that we can effectively take care of our clients. Our team goes into every project with the understanding that Rogue Industrial Services exists to serve the needs of our clients and to establish long-lasting relationships with everyone we work with.

APPROACH TO THE PROJECT

Our first order of business is to schedule a pre-construction meeting where the owners of Rogue, the Rogue team members assigned to the project and client staff will discuss needs, wants, expectations and strategy to properly execute the scope of work. At this critical meeting, we will go over the specs in detail and discuss our plan of attack. The benefit of this meeting allows our clients to get to know our staff and our owners. The Pre-Con also allows Rogue to get to know our clients.

The timeline of this project is based on quality over production. One of the benefits of working with Rogue Industrial Services is that we pride ourselves on sending Daily Field Reports (DFRs), highlighting what pipe segments were cleaned and televised each day. These reports will also give our clients real time information on any issues discovered in the field. Given that the pipes scheduled for this project are on major streets, traffic control and safety will play a major role in our timeline. A chart of our proposed production schedule by cumulative completion with notes on events, tasks and decision points can be found on the following page.

Each day will start with the crew leader communicating with the project manager to review safety and the scope of work for the day. This daily call helps the PM and the team leader check in on any anticipated issues or opportunities to operate efficiently. This process keeps the field team engaged with management and the project manager informed on the progress of our work. When information our clients should know are uncovered during these daily calls, the client is notified immediately via email and/or text. This helps keeps the client informed on what is happening in the field.



PROJECT STAFFING

This project will be lead by Scott Gilliam and Corey Lawson. The resumes for each team member are attached to this memorandum. Scott is PACP certified and a licensed CDL driver. During the project, he will be operating the combination sewer cleaner and setting up downstream to clean for the tv truck operator. Corey Lawson, who is an experienced PACP certified operator, will be in the TV truck, and will be in constant communication with Scott by utilizing two-way radios. An arrow board being towed by Rogue personnel in a ¾ ton pickup truck will also be utilized for safety for the entirety of the project. Cones will be used in all roadways to control the flow of traffic and keep our staff and the commuters safe. All team members are considered key to the success of this project. Our staff knows that the best way to ensure success is to keep lines of communication open, avoid deviating from our strategy, to execute as a team, and to make decisions as a collective unit.

ADDITIONAL INFORMATION

Our equipment list is attached for your review.

Christopher DuComb



Managing Member

Rogue Industrial Services

cducomb@rogueindustrial.com

Mobile: (617) 875-8308





Rogue Industrial Services
1250 Fox Chase Rd.
Bloomfield Hills, MI 48301
www.rogueindustrial.com

REFERENCE LIST

Project: City of Cheboygan SSES
Owner: City of Cheboygan
Contact Person: Andrew Johnston
Phone: 248-454-6300
Contract Amount: \$345,000.00
Date Completed: 09-14-2022

Project: Novi, MI. Sanitary Sewer Cleaning and Televising
Owner: City of Novi
Contact Person: Scott Roselle
Phone: 248-735-5640
Contract Amount: \$472,814.98 (3 year contract)
Date Completed: Dec. 2024

Project: Owosso sewer cleaning and televising/ Lateral Launch
Owner: City of Owosso
Contact Person: Clayton Wehner
Phone: 989-725-0550
Contract Amount: \$15,000.00
Date Completed: Feb. 2022

Project: Sewer Cleaning and Televising / Industrial Vacuuming / Sweeping / Hydro
Excavation Services.
Owner: VCI
Contact Person: Eduardo Herrera
Phone: 313-737-8647
Contract Amount: \$80,000.00
Date Completed: June, 2021

Project: Novi Watermain Hydro Excavation / Sewer cleaning / PACP / LACP Televising
Owner: City of Novi / Ric-man Construction
Contact Person: Geoff Stieler
Phone: 734-834-0336
Contract Amount: 40,000.00
Date Completed: 2022

Project: Clinton County Catch Basin Cleaning
Owner: Clinton County Road Commission
Contact Person: Scott Iler
Phone: 989-640-8558
Contract Amount: \$28,000.00
Date Completed: April 2022

Project: Traverse City Catch Basin Cleaning / stormwater CCTV investigation
Owner: City of Traverse City
Contact Person: Mark Jones
Phone: 231-590-1979
Contract Amount: \$300,000.00 (3-year contract)
Date Completed: September 2021, 2022

Project: Saginaw Charter Township Clean and Televise Sanitary Sewer
Owner: Saginaw Charter Township / Spicer Group
Contact Person: Jean Inman (Spicer Group)
Phone: 989-529-6067
Contract Amount: 250,000.00 (1+1 contract extension)
Date Completed: March 2023

Project: Hillsdale County Catch Basin Cleaning
Owner: Hillsdale County Road Commission
Contact Person: Kevin Sanders
Phone: 517-320-9969
Contract Amount: \$44,000.00
Date Completed: September 2022



Project: Montcalm County Catch Basins
Owner: Montcalm County Road Commission
Contact person: Mark Christensen
Phone: 616-835-6654
Contract Amount: \$60,000.00 (3-year contract)
Date Completed August 2022

Project: Macomb Township Cleaning and CCTV Investigation
Owner: Macomb Township / AEW
Contact Person: Frank Varicalli
Phone: 586-855-9555
Contract Amount: \$325,325.00
Date Completed: In Progress

Project: Monroe, MI. Large Diameter Sewer Cleaning and Televising / Lateral Launching
Owner: City of Monroe
Contact Person: Scott Calloway
Phone: 734-625-2096
Contract Amount: 87,500.00
Date Completed: 1-20-2023

Project: Greenville Catch Basin Cleaning
Owner: City of Greenville, MI.
Contact: Tom Pollock
Phone: 616-835-1210
Contract Amount: \$50,000.00
Date Completed: In Progress



Project: Mount Clemens Cleaning and CCTV Investigation

Owner: Macomb Township / AEW

Contact Person: Frank Varicalli

Phone: 586-855-9555

Contract Amount: \$220,000.00

Date Completed: In Progress

Project: Clinton Township Cleaning and CCTV Investigation

Owner: Clinton Township / AEW

Contact Person: Frank Varicalli

Phone: 586-855-9555

Contract Amount: \$355,000.00

Date Completed: In Progress





Scott Gilliam Sr.

Title and Responsibilities

Scott Gilliam is a Managing Partner of Rogue Industrial Services. Mr. Gilliam has been in the utility infrastructure industry for over 14 years and created our process for strategizing and executing the result-driven performance Rogue delivers. His wealth of knowledge, industry experience and daily field service support is critical to our success. Scott leads from the front and is unwaveringly dedicated to customer satisfaction, safety, and project execution. Mr. Gilliam has served as the Managing Partner of the firm since its formation and is actively involved in all our company's projects.

Experience

Mr. Gilliam has over a decade of experience in the underground infrastructure service industry with work ranging from manhole rehabilitation, sewer cleaning / televising, CIPP lining, catch basin cleaning, and industrial maintenance. Scott has personally cleaned 2 million+ feet of sanitary sewer pipe ranging from 4" to 120" in diameter. Currently, his daily project involvement ranges from in-field support, overall project management, quality control, safety protocol supervision, and operations.

Professional Training

- PACP/MACP/LACP – NASSCO Coding
- ITCP CIPP Certified
- OSHA 30 and 10 Training
- Advanced Sewer Cleaning and Maintenance certificate
- MDARD certified 5C sewer root treatment applicator
- Traffic Control and Site Management
- Confined Space Training
- IBAK, Aries, and Proteus Operator Training
- Pipelogix Software Training
- Wincan Software Training
- First Aid / AED / CPR
- NLB Waterblasting Safety and Operations Training
- MSHA Certified

Notable Projects / Relevant Qualifications

- Wayne County – Catch Basin, Storm Sewer Cleaning, and Storm Sewer Inspection

- City of Allegan – CCTV / Cleaning / Prep / CIPP
- City of Howell – SAWS CCTV / Cleaning / Pano Scanning
- St. Joseph – CCTV/ Cleaning/ CIPP
- City of Livonia – CCTV and Cleaning / MSI / FOG MSWMAG national recognition
- City of Ann Arbor – CCTV / Cleaning / MSI
- Lincoln Township – CCTV / Cleaning / Lateral Launching
- City of Detroit DWSD- Industrial services Contract
- City of Royal Oak – CCTV / Cleaning / Root Treatment
- City of Saginaw – CCTV / Cleaning / CIPP
- Lapeer WWTP Industrial Cleaning / Water-Blasting
- GM Tech Center (Warren, MI) Industrial Cleaning / Waster-Blasting
- Romeo, MI. SAWS, Cleaning and Televising Project
- Clarksville, MI. SAWS Cleaning and Televising Project
- Augusta Twp, MI. SAWS Cleaning and Televising Project
- Village of Augusta, MI. SAWS Cleaning and Televising Project
- Traverse City, MI. Catch Basin Cleaning City-Wide Project + Televising
- Linden, MI. SAWS Cleaning and Televising Project
- Ferris State University Cleaning and Televising Project
- Saginaw, MI. Sewer Cleaning and Televising Annual Contract
- South Lyon, MI. SAWS Cleaning and Televising





Corey Lawson

Title and Responsibilities

Corey Lawson is the QAQC Manager and a CCTV operator with Rogue Industrial Services. Mr. Lawson has been in the utility infrastructure industry since 2004. Corey started his career as a laborer working on a CCTV team. As an ambitious self-starter, Corey progressed through the CCTV side of the business. Over the years, Corey has been intimately involved in every facet of sewer cleaning, televising, and rehab. Corey is currently running his own CCTV team within Rogue Industrial Services.

Experience

Mr. Lawson has worked on many difficult projects within North America ranging from Cleaning, Televising, and Rehab. With 18 years of experience in the industry, Mr. Lawson has developed an eye for detail. He has trained and supported many new operators as they worked towards their PACP certifications. Corey's ability to efficiently follow NASSCO guidelines and review project data has become the standard at Rogue Industrial and his daily contributions to our organization are invaluable.

Professional Training

- PACP/MACP/LACP – NASSCO Coding
- U-213-16817
- OSHA 30 and 10 Training
- Traffic Control and Site Management
- Confined Space Training
- IBAK, Aries, Telespector Grout, and Air Testing
- Pipelogix Software Training
- Wincan Software Training
- First Aid / AED / CPR
- Rapidview certified repair technician
- Project Data Submittal MDB file
- Wayne County Community College Computer Information Systems

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: 3/28/23	Title: EGLE Brownfield Grant/Loan Application for Shaw-Walker Project
Submitted By: Jake Eckholm	Department: Economic Development
Brief Summary: Typically, these applications are run through the Brownfield Redevelopment Authority, but they are already applicants for funding on behalf of Adelaide Pointe and cannot submit two requests in the same program year. EGLE has indicated that the city may directly apply on behalf of the Shaw-Walker project.	
Detailed Summary & Background: We have worked closely with Environmental Resource Group for several months on the environmental needs that are anticipated at Shaw-Walker, and with vapor mitigation needed for all buildings the costs will be substantial. EGLE administers an annual program that allows public entities to apply for up to \$1,000,000 in grant funds and up to \$1,000,000 in loan funds. Regardless of whether the local Brownfield Board or the city serves as the applicant, all loan/grant applications are considered backed by the full faith and credit of the city. Parkland has asked for the city commission to allow the city to serve as the applicant for these funds, and has agreed to make sure the city is made whole either through TIF capture (the typical repayment method) or direct payment if TIF revenues are insufficient. ERG will do the leg work on the actual application and submittal, and work with our staff during implementation if funding is achieved for all necessary reporting. Staff recommends approval of this request.	
Goal/Focus Area/Action Item Addressed: Goal 1 (Image) Housing Focus Area, Goal 2 (Quality of Life) Housing Focus Area, Action Item 21-8 Expand Housing Options, and Goal 3 (Revitalize Revenues) Housing Focus Area, Action Item 21-13 Increase Property Values in Urban Core and Eastside Neighborhoods, Blight Elimination	
Amount Requested: N/A	Amount Budgeted: N/A
Fund(s) or Account(s): N/A	Fund(s) or Account(s): N/A
Recommended Motion: Motion to apply for EGLE Brownfield Grant/Loan Funding for use at the Shaw Walker Project in an amount of \$2,000,000.	

Approvals:		Guest(s) Invited / Presenting:	
Immediate Division Head	☒	Information Technology	☐
Other Division Heads	☐	Communication	☐
Legal Review	☒		
For City Clerk Use Only:			
Commission Action:			



Environmental Resources Group

75 W. Walton Avenue • Suite C • Muskegon, MI 49440
Phone: 231-747-8556 • Fax: 231-747-8558

March 22, 2023

City of Muskegon
933 Terrace Street
Muskegon, MI 49440

RE: EGLE Brownfield Funding for Former Shaw Walker Facility

To Whom it May Concern:

Environmental Resources Group, LLC (ERG) is pleased to discuss the opportunity for the City of Muskegon to support and submit a proposal for Brownfield Funding through Environment, Great Lakes, and Energy (EGLE). ERG is appealing to the City of Muskegon for this request rather than the Brownfield Redevelopment Authority (BRA) directly because a proposal for EGLE Brownfield funding for a different property in Muskegon has already submitted by the BRA for this fiscal year.

ERG has been retained by Parkland Properties of Michigan to provide environmental consulting services for their property, the Former Shaw Walker complex, located at 965 West Western Avenue, 920 & 930 Washington Avenue, and 1330 Division Street. Through its rich, long history of manufacturing at the property, former operations at the Site have left the land impacted with contaminants including volatile organic compounds (VOCs), heavy metals, per- and polyfluoroalkyl substances (PFAS), and polynuclear aromatic hydrocarbons (PNAs). To safely redevelop the Site, due care activities are necessary.

The projected costs for due care activities, such as vapor intrusion mitigation, are currently estimated at over \$1 million dollars for the existing structures. Asbestos abatement costs have been estimated well over \$1 million dollars. To assist in the redevelopment of the site, ERG is proposing that the City of Muskegon support and submit a proposal for \$1 million dollars in EGLE Brownfield grant funding and \$1 million dollars in EGLE Brownfield loan funding. ERG will assist the City of Muskegon in preparing the proposal.

Should you have questions or need additional information feel free to contact us.

Sincerely,

ENVIRONMENTAL RESOURCES GROUP

Jacqueline L. Freiberg, Project Manager

Cc: Alfred J. Jordan II, CPG – ERG, Executive Vice President



March 22, 2023

Parkland Properties of Michigan
75 W Walton Avenue, Suite A
Muskegon, MI 49440

City of Muskegon
933 Terrace Street
Muskegon, MI 49440

RE: Request for Support for Shaw Walker Furniture Company Redevelopment

City of Muskegon Commissioners and staff:

Parkland Properties desires to commence cleanup activities this year at the former Shaw Walker Furniture Company site in downtown Muskegon to prepare the site for adaptive redevelopment into condominiums, apartments, and retail. The Shaw Walker site is heavily contaminated due to its former industrial uses, and the environmental cleanup and mitigation efforts are projected to cost well more than \$2 million.

We are writing to request that the City of Muskegon request \$2 million from the State of Michigan Department of Environment, Great Lakes, and Energy (EGLE) to provide funding to assist with carrying out cleanup activities at the site through EGLE's Brownfield program. The proposed \$2 million request to EGLE would include \$1 million in grant funding and a loan for \$1 million. Parkland agrees to repay the loan from future tax capture at the site and if for any reason the tax capture is not sufficient, Parkland will repay the difference on the loan.

Please do not hesitate to reach out to us if you have any questions.

Sincerely,



Jon Rooks

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023		Title: Off-Premises Tasting Room License – The People’s Cider Company	
Submitted By: Ann Meisch		Department: City Clerk	
Brief Summary: The People’s Cider Company has been chosen for a chalet at Western Market and needs an Off-Premises Tasting Room License			
Detailed Summary & Background:			
Goal/Focus Area/Action Item Addressed: Action item 2022 Goal 2 Economic Development, Housing, and Business			
Amount Requested: N/A		Amount Budgeted: N/A	
Fund(s) or Account(s): \$1,000 Revenue to Liquor License		Fund(s) or Account(s):	
Recommended Motion: To approve the resolution requesting an Off-Premises Tasting Room License for The People’s Cider Company, 307 W. Western, Suite Q and authorize the Clerk to sign.			
Approvals: Immediate Division Head ☐ Information Technology ☐ Other Division Heads ☐ Communication ☐ Legal Review ☐		Guest(s) Invited / Presenting Yes ☐ No ☐	
For City Clerk Use Only: Commission Action:			



Off-Premises Tasting Room License & Permit Application

For more information on manufacturer and wholesaler licenses and permits, please visit the Liquor Control Commission's frequently asked questions website [by clicking this link](#).

Before you begin filling out the attached application, please review this checklist for the forms and documents you will need to submit with your completed application form.

The attached LCC-150a form will automatically calculate fees when opened using Adobe Acrobat Reader. The form's functionality may not work with third-party PDF readers. You may download a free copy of Adobe Acrobat Reader on the Adobe website: <https://get.adobe.com/reader/>

- ☒ Completed Off-Premises Tasting Room License & Permit Application (attached)
- ☒ Inspection, License, and Permit Fees
- ☒ Local Government Authorization (Form LCC-106b) (attached) - **For a new Off-Premises Tasting Room License only**
- ☒ Property document (lease, deed, land contract, etc.)

Important Information Regarding Off-Premises Tasting Room Licenses

- An Off-Premises Tasting Room License is issued to a manufacturer licensee that operates a tasting room that is not located on the licensed manufacturing premises of the manufacturer licensee. If you will be operating a tasting room jointly with other manufacturer licensees at the same location, you must apply for a Joint Off-Premises Tasting Room License using the [Joint Off-Premises Tasting Room License & Permit Application \(LCC-150b\)](#).

Only the following manufacturer license types may be issued an Off-Premises Tasting Room License:

- Wine Maker
- Small Wine Maker
- Brandy Manufacturer
- Distiller (Manufacturer of Spirits)
- Small Distiller

- A manufacturer licensee may be issued no more than five (5) Off-Premises Tasting Room Licenses where it may sell and serve full drinks. Any Joint Off-Premises Tasting Room Licenses held by the manufacturer licensee with other manufacturers at other locations that are designated for the sale and service of full drinks also count toward the limit of five (5) locations. The applicant must designate the type of license at the time of application and the designation may not be changed once the license is approved and issued.
- A manufacturer licensee may have an unlimited number of Off-Premises Tasting Room Licenses that sell or give away samples only (3 ounces of wine or 1/2 ounce of spirits or brandy per sample). The applicant must designate the type of license at the time of application and the designation may not be changed once the license is approved and issued.
- An applicant for an Off-Premises Tasting Room Licenses must obtain approval from the legislative body of the local governmental unit where the licensed premises will be located. Locations in the City of Detroit do not require local governmental approval.
- The wine, spirits, or brandy sold, served, or given away as samples at a Joint Off-Premises Tasting Room License location must be manufactured by the licensee at its manufacturing premises.
- A Distiller or Small Distiller licensee that also holds a Mixed Spirit Drink Manufacturer license may sell mixed spirit drink products it manufactures at an Off-Premises Tasting Room License location.



Off-Premises Tasting Room License & Permit Application

For information on manufacturer and wholesaler licenses and permits, including a checklist of required documents for a completed application, please visit the Liquor Control Commission's frequently asked questions website [by clicking this link](#).

Part 1 - Applicant Information

Individuals, please state your legal name. Corporations or Limited Liability Companies, please state your name as it is filed with the State of Michigan Corporation Division.

Applicant name(s): The Peoples Cider Company LLC											
Address to be licensed: 307 Q West Western Ave											
City: Muskegon	Zip Code: 49440										
City/township/village where license will be issued: Muskegon		County: Muskegon									
Contact name: Jason Lummen	Contact phone: 616-322-7805	Contact email: jason@thepeoplescider.com									
Check all applicable license types that you hold at your licensed manufacturing premises: <table><tr><td>☒ Small Wine Maker license</td><td>☐ Small Distiller license</td><td rowspan="4">You may only sell, give away, and serve wine or spirits at an Off-Premises Tasting Room Licensed location that you manufacture under the licenses you hold at your licensed manufacturing premises.</td></tr><tr><td>☐ Wine Maker license</td><td>☐ Distiller license</td></tr><tr><td>☐ Brandy Manufacturer license</td><td></td></tr><tr><td></td><td></td></tr></table>			☒ Small Wine Maker license	☐ Small Distiller license	You may only sell, give away, and serve wine or spirits at an Off-Premises Tasting Room Licensed location that you manufacture under the licenses you hold at your licensed manufacturing premises.	☐ Wine Maker license	☐ Distiller license	☐ Brandy Manufacturer license			
☒ Small Wine Maker license	☐ Small Distiller license	You may only sell, give away, and serve wine or spirits at an Off-Premises Tasting Room Licensed location that you manufacture under the licenses you hold at your licensed manufacturing premises.									
☐ Wine Maker license	☐ Distiller license										
☐ Brandy Manufacturer license											

Part 2 - License, Permit, and Permissions & Fees

License, Permits, Permissions:	Base Fee:	Fee Code MLCC Use Only	
☒ Off-Premises Tasting Room License	\$100.00	4038	*Sunday Sales Permit (AM) allows the sale of spirits and wine on Sunday mornings between 7:00am and 12:00 noon, if allowed by the local unit of government.
☐ Sunday Sales Permit (AM)*	\$160.00	4033	
☒ Sunday Sales Permit (PM) **	\$15.00	4032	**Sunday Sales Permit (PM) allows the sale of spirits on Sunday afternoons and evenings between 12:00 noon and 2:00am (Monday morning), if allowed by the local unit of government. No Sunday Sales Permit (PM) is required for the sale of wine on Sunday after 12:00 noon.
☐ Catering Permit	\$100.00	4031	
☐ Dance Permit	No Charge		A \$70.00 inspection fee is required for a new Off-Premises Tasting Room license.
☐ Entertainment Permit	No Charge		
☐ Specific Purpose Permit (list activity below):			
Days/Hours requested: _____			
☐ Extended Hours Permit	No Charge		
Check type(s): ☐ Dance ☐ Entertainment			
Days/Hours requested: _____			
☒ Outdoor Service	No Charge		
☐ Direct Connection(s)	No Charge		

Inspection Fee: (MLCC Fee Code 4036)	\$70.00
License & Permit Fees:	
TOTAL FEES:	

Make Checks Payable to State of Michigan

Part 3 - Off-Premises Tasting Room License Designation

Pursuant to MLC 436.1536, a licensee may have no more than five (5) Off-Premises Tasting Room Licenses where it may sell and serve full drinks. Any Joint Tasting Room Licenses held by the licensee at other locations that are designated for the sale and service of full drinks also count toward the limit of five (5) locations. A licensee may have an unlimited number of Off-Premises Tasting Room Licenses that sell or give away samples only (3 ounces of wine or 1/2 ounce of spirits or brandy per sample).

You must designate the type of Off-Premises Tasting Room License for which you are applying at this location. Please note that this designation cannot be changed once the license is approved and issued.

Off-Premises Tasting Room License Designation (Select One): ☒ Full Drinks ☐ Samples Only

Part 3 - Signature of Applicant

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 license 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.

Print Name of Applicant & Title

Signature of Applicant

Date

Please return this completed form along with any corresponding documents 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 to: 517-763-0059



Local Government Approval For Off-Premises Tasting Room License
(Authorized by MCL 436.1536)

Instructions for Applicants:

- You must obtain a recommendation from the local legislative body for a new Off-Premises Tasting Room License application.

Instructions for Local Legislative Body:

- Complete this resolution or provide a resolution, along with certification from the clerk or adopted minutes from the meeting at which this request was considered.

At a _____ meeting of the _____ council/board
(regular or special) (township, city, village)
called to order by _____ on _____ at _____
the following resolution was offered: (date) (time)
Moved by _____ and supported by _____
that the application from Jason M. Lummen, The Peoples Cider Company LLC
(name of applicant - if a corporation or limited liability company, please state the company name)

for a **NEW OFF-PREMISES TASTING ROOM LICENSE**

to be located at: 307 West Western Ave, Suite Q Muskegon, Michigan 49440

It is the consensus of this body that it _____ this application be considered for
(recommends/does not recommend)
approval by the Michigan Liquor Control Commission.

If disapproved, the reasons for disapproval are _____

Vote

Yeas: _____

Nays: _____

Absent: _____

I hereby certify that the foregoing is true and is a complete copy of the resolution offered and adopted by the _____
council/board at a _____ meeting held on _____ (township, city, village)
(regular or special) (date)

Print Name of Clerk

Signature of Clerk

Date

Under Article IV, Section 40, of the Constitution of Michigan (1963), the Commission shall exercise complete control of the alcoholic beverage traffic within this state, including the retail sales thereof, subject to statutory limitations. Further, the Commission shall have the sole right, power, and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within this state, including the licensure of businesses and individuals.

Please return this completed form along with any corresponding documents to:

Michigan Liquor Control Commission

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

Hand deliveries or overnight packages: Constitution Hall - 525 W. Allegan, Lansing, MI 48933

Fax to: 517-763-0059



Michigan Department of Licensing and Regulatory Affairs
Finance and Administrative Services
Revenue Services

LARA Revenue Services **is not** a part of
the Michigan Liquor Control
Commission (see note below).

Credit Card Authorization Form

**** FAX COMPLETED FORM TO SECURE FAX LINE: 517-284-8557 ****

**** DO NOT EMAIL OR MAIL THIS FORM ****

Requests with credit card payments that are not faxed to the above secure fax line will be destroyed along with the credit card authorization in order to ensure the security of applicants' personal credit card numbers.

****IF YOU ARE NOT SUBMITTING AN APPLICATION FORM WITH THIS CREDIT CARD AUTHORIZATION, YOU MUST PROVIDE AN ITEMIZATION OF THE FEES FOR WHICH YOU ARE SUBMITTING PAYMENT OR YOUR PAYMENT WILL NOT BE PROCESSED****

Name on Card: _____

Payment Amount: _____

Billing Address: _____

Card Number: _____

City: _____ State: _____ Zip Code: _____

Check One:

Phone: _____

☐ MasterCard

☐ Visa

☐ Discover

Email: _____

Security Code/CVV Code: _____

Applicant/Licensee Name: _____

Request or Business ID #: _____

Expiration Date: _____

Payment is for: _____

Signature _____

IF YOU ARE NOT SUBMITTING AN APPLICATION FORM WITH THIS CREDIT CARD AUTHORIZATION, YOU MUST PROVIDE AN ITEMIZATION OF THE FEES FOR WHICH YOU ARE SUBMITTING PAYMENT OR YOUR PAYMENT WILL NOT BE PROCESSED.

Credit Card Payment Itemization:

Fee Type	Fee Amount	MLCC Fee Code
☐ Inspection Fee(s):	_____	4036
☐ Off-Premises Tasting Room License:	_____	4038
☐ Sunday Sales Permit (AM):	_____	4033
☐ Sunday Sales Permit (PM):	_____	4032
☐ Catering Permit:	_____	4031

LARA Revenue Services **is not** a part of the Michigan Liquor Control Commission (MLCC). Receipt of payment and application forms by LARA Revenue Services does not constitute receipt of an application by the MLCC. **Applications submitted through LARA Revenue Services may take up to two (2) additional business days to be received by the MLCC after receipt by LARA Revenue Services.**

For requests that require a timely receipt of an application by the MLCC to be processed, such as Special Licenses and temporary requests, please ensure that your application will be received in adequate time to be processed by the MLCC after the payment is received and processed by LARA Revenue Services.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: March 28, 2023	Title: 1170 W. Southern Ave. (MOCAP Building) property sale/transfer
Submitted By: Jonathan Seyferth/John Schrier	Department: City Manager
Brief Summary: MOCAP operates out of 1170 W. Southern Ave. This is currently a City owned property and MOCAP has expressed a desire to own the building/property the organization has been operating out of for many years. This action will, through a multi-step process, transfer that property to MOCAP via the Hume Home of Muskegon. The City will receive \$3,000 for the sale.	
Detailed Summary & Background: The Muskegon-Oceana Community Action Partnership (MOCAP) operates out of a building (a former City fire station) at 1170 W. Southern Ave. MOCAP has been in the building for many years. MOCAP wishes to purchase the property from the City for a variety of different reasons. The City originally obtained the property from the Hume Home of Muskegon in 1950 paying \$3,000. The purchase agreement has a deed restriction which states that when the City stops using the property for municipal purposes the Hume Home may exercise its right to repurchase the property for the same amount the City purchased it. The Hume Home of Muskegon is comfortable with the property being purchased by MOCAP, however, because of the deed restrictions from the 1950s the Hume Home of Muskegon is going to exercise its right to purchase the property back for \$3,000 (paid to the City) and then sell it to MOCAP for \$3,000. This two-step process will cure any questions regarding the property transfer/deed restriction and will allow MOCAP to take ownership of a building it has operated in and maintained for many years.	
Goal/Focus Area/Action Item Addressed:	
Amount Requested: None	Amount Budgeted: None
Fund(s) or Account(s):	Fund(s) or Account(s):

Recommended Motion: I recommend for approval the sale of 1170 W. Southern Ave. back to the Hume Home of Muskegon for the sum of \$3,000 as provided for in the original 1950 purchase agreement and authorize the City Manager to sign all closing documents.

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

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

Guest(s) Invited / Presenting

Yes ☐
No ☒

For City Clerk Use Only:

Commission Action:

TRANSFER/PURCHASE AGREEMENT

This Agreement entered into and made effective March ____, 2023, between the **City of Muskegon**, a municipal corporation ("City"), whose address is 933 Terrace Street, Muskegon, Michigan 49440; the **Hume Home of Muskegon**, a Michigan nonprofit corporation ("Hume"), whose address is 3196 Kraft Avenue SE, Suite 203, Grand Rapids, Michigan 49512; and **Muskegon Community Services Agency, f/k/a Muskegon-Oceana Community Action Partnership, Inc., a/k/a MOCAP**, a Michigan nonprofit corporation ("MCSA"), whose address is 1170 W. Southern Avenue, Muskegon, Michigan 49441, as follows:

A. On January 20, 1950, Hume deeded the following parcel of property to City:

Lots Thirteen (13) and Fourteen (14) of Block 483 of the Revised Plat (of 1903) of the City of Muskegon, as per plat of record in the office of the Register of Deeds for Muskegon County, Michigan.

("Property")

B. The deed ("Deed") was recorded in Liber 578 Page 368 of the Muskegon County Records.

C. Under the terms of the Deed, in the event the Property ceases to be used for municipal purposes, Hume may repurchase the Property for the same consideration recited in the Deed.

D. City has discontinued use of the Property for municipal purposes and Hume wishes to exercise its right to repurchase as provided for in the Deed.

E. MCSA is currently occupying the Property under the terms of a lease with City and wishes to purchase the same from Hume at the time of the reconveyance of the Property from City to Hume and Hume desires to sell the same to MCSA.

NOW, THEREFORE, in consideration of the benefits to be derived by the parties, it is agreed as follows:

1. Transfer City to Hume. At closing, City shall relinquish all rights to the Property and shall reconvey its interest in the Property to Hume by quit claim deed.

2. Consideration Hume to City. Hume shall pay the City the sum of *Three Thousand Dollars and 00/100 (\$3,000.00)* by check or other means acceptable to City, at the time of closing.

3. Transfer Hume to MCSA. Contemporaneously with the delivery of deed and payment of funds as set forth in paragraphs 1 and 2, Hume shall execute a quit claim deed, deeding the Property to MCSA.

4. Consideration MCSA to Hume. In consideration of the deed of Property from Hume to MCSA, MCSA shall pay to Hume at the closing the sum of *Three Thousand Dollars and 00/100 (\$3,000.00)* by check or other means acceptance to Hume.

5. Closing. The closing of the sale shall take place at a location to be agreed on by the parties as soon as possible following approval as required in paragraph 13(d) below, but not later than April 15, 2023.

6. Closing Costs/Transfer Tax. MCSA shall pay all costs of recording and all transfer tax.

7. Possession. MCSA shall receive possession of the Premises as soon as the closing is completed.

8. Survey. MCSA waives a survey.

9. Status of Title. MCSA is satisfied with the title to the Property as it exists on the date of this Agreement.

10. Condition of the Property to be Transferred. The Property shall be transferred to MCSA in the same condition as on the effective date of this Agreement.

11. Property Taxes and Assessments. MCSA shall pay all property taxes and assessments which become due and owing after Closing.

12. Warranties. This Agreement is entered into by the parties without warranties or representations except as set forth herein.

13. Conditions Precedent for Performance by Parties. The obligation of the Parties to consummate the sale contemplated by this Agreement is subject to the fulfillment of the following conditions before the closing:

a. Each of the Parties shall perform and comply with all its obligations under this Agreement before the closing.

b. There shall be no material adverse change in the Property and no encumbrance on the title to the Property from the date of this Agreement to the date of the closing.

c. No action or proceeding to restrain, prohibit, or declare illegal the transaction contemplated by this Agreement shall be pending or threatened. No order restraining or prohibiting the transaction contemplated by this Agreement shall be issued by any public authority, governmental agency, or court. No attachments, garnishments, levies, or liens shall be filed or in effect regarding the transaction contemplated by this Agreement, the Property, or the personal property.

d. This transaction shall have been approved by the Muskegon City Commission.

14. Broker. Parties acknowledge that no broker has performed services in this matter and no commissions will be owed.

15. Termination. If any of the parties is not obligated to complete this Agreement because a condition precedent is not met, that party may terminate this Agreement by notifying the other parties of the intention to terminate this Agreement and the reason.

16. Whole Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels any other negotiations or agreement between the parties relating to the transaction contemplated by this Agreement. None of the prior or contemporaneous negotiations, preliminary drafts, or prior versions of this Agreement shall be used by any of the parties to construe or affect the validity of this Agreement. Each party acknowledges that it has not made or relied on any representations, inducements, or conditions not specified in this Agreement.

17. Modifications; Counterparts; Electronic Signatures. No modification, alteration, or amendment to this Agreement shall be binding unless in writing and signed by all of the parties. This Agreement may be executed electronically in pdf form and/or in counterparts, and all counterparts together shall constitute one integrated agreement and be deemed an original document.

18. Successors and Assigns. This Agreement binds and benefits the parties and their successors and assigns.

19. Governing Law and Venue. This Agreement shall be construed in accordance with and governed by Michigan laws. Any actions concerning this Agreement must be brought in Mason, Michigan.

20. Notices. Any notices required by this Agreement shall be served personally or by registered mail, certified receipt requested, to the party for whom it is intended at the address listed at the beginning of this Agreement.

21. Effective Date. This Agreement shall be effective and dated on the first page using the date the last of the parties listed below have signed this Agreement.

[Signatures appear on following page]

City of Muskegon

Dated: _____, 2023

By: Ken Johnson
Its: Mayor

Dated: _____, 2023

By: Ann Marie Meisch
Its: Clerk

Hume Home of Muskegon, Inc.

Dated: _____, 2023

By: Mitchell A. McNeal
Its: President

Muskegon Community Services Agency

Dated: March 16, 2023



By: Gregory Pittman
Its: Executive Director