

CITY OF MUSKEGON

CITY COMMISSION MEETING

MARCH 12, 2019 @ 5:30 P.M.

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

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
 - A. West Michigan Lake Hawks – Team Introduction and Presentation**
 - B. Delta Days at City Hall Dwana Thompson**
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes City Clerk**
 - B. Fireworks Display Permit for Heritage Landing City Clerk**
 - C. Adopt a Resolution Approving On-Premises Tasting Room Permit at 794 Pine Street City Clerk**
 - D. Notice of Intent Resolution for Sanitary Sewer and Water Supply Revenue Bonds Finance**
 - E. Amity Bridge – Resolution of Support for Bridge Funding Application and Commitment to Matching Funds Department of Public Works**
 - F. Resolution of Authority to Sign Street Lighting Contracts with Consumers Energy Department of Public Works**
 - G. Authorized Representative for County Wastewater Committee Department of Public Works**

H. Heritage Association Streetlight Easements Department of Public Works

I. Heritage Village Streetlights Department of Public Works

J. Request for Authorization to Sign Community & Neighborhood Services

K. Short Term Vacation Rentals – Second Reading Public Safety

☐ **PUBLIC HEARINGS:**

A. Public Hearing for DWRP Project Plan Department of Public Works

B. Public Hearing – Request to Establish an Obsolete Property District – 1937 Lakeshore Drive Planning & Economic Development

C. Public Hearing – Request to Issue an Obsolete Property Certificate – Ghezzi Investments, LLC Planning & Economic Development

D. Recommendation for Annual Renewal of Liquor Licenses City Clerk

E. Marsh Field Passport Grant Application City Manager

☐ **COMMUNICATIONS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. LC Walker Arena – Lumberjacks Lease City Manager

B. Purchase Agreement – 880 First Street, 731 Yuba Street, 205 East Muskegon Avenue, 287 East Muskegon Avenue, and 225 Eastern Avenue City Manager

C. Purchase Agreement and Grant Agreement – West Shoreline Correctional Facility City Manager

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC PARTICIPATION:**

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

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

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

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: March 11, 2019

Here is a quick outline of the items on our agendas:

Work Session:

We will hold the CRC meeting first to accommodate the citizen appreciation event. The work session will follow. Staff strategically did not include any items on the work session. As usual, questions about items on the Tuesday agenda are always welcomed/encouraged Monday evening to provide staff time to prepare responses and/or make changes.

Regular Session:

1. Under the Consent Agenda, we are asking the Commission to consider the following:
 - a. Approval of meeting minutes from the most-recent City Commission meeting.
 - b. Approve a fireworks display permit for Heritage Landing for the evening of July 4, 2019.
 - c. Approve a resolution for an on-premises tasting room at 794 Pine Street. The new tenant of that building is Rake Beer Project – they will be the downtown’s third brewery.
 - d. Approval of the notice of intent to issue sanitary sewer and water supply bonds. This notice is in support of our recently-approved water and sewer improvements. A large portion of the bonds will be forgiven by the state upon completion of the project and remittance of the first bond scheduled bond payment.
 - e. Permission to apply for grant funds to replace the Amity Street Bridge. The goal would be to remove the bridge and replace it with a new roadway on fill. We also applied for these funds last year, but were not awarded. The local match would be \$200,000.
 - f. Approval of a resolution authorizing Leo Evans to approve street light contract modifications of less than 10 lights. LeighAnn Mikesell previously had this authority.

- g. Approval of a resolution designating Leo Evans as the City's representative on the Municipal Wastewater Management Committee. LeighAnn currently serves in this capacity.
 - h. Approval of an easement agreement with various property owners to allow the city access to Heritage Village lights that are on private property but are about to become the responsibility of the city to maintain.
 - i. Approval of an agreement to assume city ownership of the 26 Heritage Village streetlights. All of the lights are LED.
 - j. Approval of a resolution officially authorizing Oneata Bailey to sign agreements related to our affordable housing programs on behalf of the City.
 - k. Second Reading of the Short Term Rental Ordinance.
2. Under Public Hearings, we are taking comments on the following:
- a. Drinking Water Revolving Loan Fund Project Plan. This plan was posted for public comment on February 10th.
 - b. Establishment of an Obsolete Property District at 1937 Lakeshore Drive.
 - c. Issuance of an Obsolete Property Certificate to Ghezzi Investments, LLC for 1937 Lakeshore Drive. The development will include nine apartments and four commercial spaces, with a total capital investment of \$1.1 Million.
 - d. We will hold a public hearing on various liquor licenses that staff is recommending not be approved for renewal.
 - e. We will hold a public input session regarding a proposed passport grant for improvements at Marsh Field.
3. Under the New Business, we are asking the Commission to consider the following:
- a. Approval of a lease agreement with the Muskegon Lumberjacks
 - b. Authorization to enter into a purchase agreement with Core Development for the sale for the former Ameribank Building and the former Farmer's Market. We are asking for changes in the combined purchase price to help the purchaser address development obstacles while still meeting market demand. The Farmers Market site is being reduced to \$50,000 following a soils and structures assessment that determined that significant sheet pilings would be needed to build on the site. The pilings would likely cost in excess of \$100,000 in order to accommodate construction on the site. The 880 First site is being reduced to \$150,000 to help the purchaser address rising construction costs and provide a product that can be effectively sold at the prevailing market rate without creating a funding gap. It is important that the project proforma does not show an operating gap because it is unlikely that the MEDC will recommend approval of CRP incentives without the

belief that the project is sustainable. Staff is recommending that both properties be sold on one agreement. The Ameribank really should not be exposed to another winter like this if we want it to continue to be a viable redevelopment structure.

- c. Approval of the purchase agreement with the State Land Bank to acquire the vacant West Shoreline Correctional Facility as well as the grant agreement with the state of Michigan. The purchase price is \$1,398,323.50. We are also obligated to contribute \$396,676.50 to install a new fence separating the site from the remaining correctional facilities. Additionally, we are required to expend \$350,000 demolishing structures on the site and \$15,000 completing environmental assessments. We also must spend \$3,000 on closing costs. Our total costs are expected to be \$2,160,000. However, the \$4 Million grant from the State of Michigan will offset these and other development costs.

Let me know if you have any questions/comments/concerns

Frank

Date: March 6, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the February 19, 2019 Joint Meeting with the Muskegon Public School Board, minutes of the February 26, 2019 Regular Meeting, and minutes of the March 1, 2019 Goal Setting Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

City of Muskegon City Commission

Joint Meeting with

Muskegon Public School Board

Tuesday, February 19, 2019

8:00 p.m.

Hackley Administration Building

349 W. Webster Avenue

Muskegon, MI 49440

MINUTES

Present: Board of Education Members - Cindy Larson, Bill O'Brien, Lynette Marks, Zachary Anderson, Louis Churchwell, Tasha Bibbs-Oakes; City Commission Members – Debra Warren, Ken Johnson, Willie German, Jr., Byron Turnquist, Dan Rinsema-Sybenga, and Vice Mayor Hood

Absent: BOE Member Billie Bruce and Mayor Stephen J. Gawron

Motion by Mr. O'Brien, second by Vice Mayor Hood, to approve the agenda – all in favor,
Motion Carried.

Discussion took place amongst all of the members regarding the possibility of having some Youth Programs with city staff as mentors. There was conversation about how to raise school counts and losing students that are going to the middle school. Customer service, stereotyping, self-promotion, and high-dollar scholarships were also part of the conversation.

Discussion also took place regarding the City sponsoring STEM programs. STEM stands for Science, Technology, Engineering, and Mathematics. Some ideas discussed included use of college-readiness curriculum and getting students to finish college.

The group discussed planning efforts related to the Hackley Hospital site, the conversion of Peck and Sanford to two-way traffic, and Neighborhood planning for future school closings or relocations.

Superintendent Justin Jennings will be meeting with the Boys & Girls Club to discuss the use of Angell School for their program.

Discussion took place regarding the city's goal to increase population and add missing middle housing and consistent coordination among school and city staff.

The use of the Hackley Administration Building was discussed and the building is in need of some upgrades. There was some discussion of the possibility of selling the building if there are no plans to put money into it.

The joint meeting adjourned at 9:43 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

FEBRUARY 26, 2019 @ 5:30 P.M.

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

MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, February 26, 2019, Reverend Darrin Longmire, Forest Park Covenant Church, opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL FOR THE REGULAR COMMISSION MEETING:

Present: Mayor Stephen J. Gawron, Vice Mayor Eric Hood, Commissioners Ken Johnson (arrived at 5:35 p.m.), Byron Turnquist, Debra Warren, and Dan Rinsema-Sybenga, City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Commissioner Willie German, Jr.

2019-14 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve the minutes of the February 11, 2019 Worksession meeting and February 12, 2019 Regular meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Special Event Liquor License – Farmers Market for Blues & BBQ Fundraiser City Clerk

SUMMARY OF REQUEST: The City Clerk's Office is organizing a Taste of Muskegon Fundraiser to be held on Saturday, March 23, 2019 and is seeking City Commission approval to apply for a license for beer, wine, and spirit sales for this event. The Farmer's Market does have a liquor license but the licensed area

does not extend beyond the barn.

FINANCIAL IMPACT: \$50 permit from the State for every date requested.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve a special liquor license application for the March 23, 2019 Blues & BBQ, Taste of Muskegon Fundraiser event.

D. Authorized Representative for Drinking Water Grant Department of Public Works

SUMMARY OF REQUEST: Approve the resolution to designate the Public Works Director as authorized representative for the Pilot Drinking Water Community Water Supply Grant Program in all transactions with the MDEQ related to this grant.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the resolution.

E. Street Administrator Resolution Department of Public Works

SUMMARY OF REQUEST: Approve the resolution to designate the Public Works Director as the street administrator in all transactions with the Michigan Department of Transportation.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the resolution.

F. Authorized Representative for State Revolving Fund Department of Public Works

SUMMARY OF REQUEST: Approve the resolution to designate the Public Works Director as the authorized representative for the State Revolving Fund Loan Program in all transactions with the MDEQ related to this grant.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approve the resolution.

G. City of Muskegon/MDOT Project Agreement – Lakeshore Drive
Department of Public Works

SUMMARY OF REQUEST: Approve the contract with MDOT for Lakeshore Drive construction between McCracken and Laketon and approve the resolution authorizing the Mayor and City Clerk to sign the contract.

FINANCIAL IMPACT: MDOT's participation is limited to the approved federal

funds of \$800,000. The estimated total construction cost is \$5,700,000 plus engineering cost.

BUDGET ACTION REQUIRED: None at this time, this project is included in the 18-19 budget.

STAFF RECOMMENDATION: Approve the contract and resolution authorizing the Mayor and Clerk to sign both.

H. Drinking Water Revolving Fund (DWRF) Project Plan – Amendment

Department of Public Works

SUMMARY OF REQUEST: Authorize staff to sign an amendment to the engineering services agreement with Prein & Newhof Engineering to develop a Drinking Water Revolving Fund Project Plan. The value of the amendment is estimated at \$10,000. The original contract was for a not to exceed amount of \$15,500.

The original engineering services agreement with Prein & Newhof to develop a DWRF Project Plan was approved in December to target fiscal year 2020 dollars, in January we were made aware of left over fiscal year 2019 DWRF funds that could be partnered with already planned and underway SRF projects.

The amendment to the original contract would cover the increased costs necessary to pursue the additional fiscal year 2019 funding and still allow for the development of the full plan for fiscal year 2020.

FINANCIAL IMPACT: \$10,000

BUDGET ACTION REQUIRED: None, this will be addressed during a future reforecasting.

STAFF RECOMMENDATION: Authorize staff to enter into the amended engineering services agreement with Prein & Newhof.

I. W-91838.2 Water Service Line Replacements

Department of Public

Works

SUMMARY OF REQUEST: To award contract (W-91838.2) for replacement of water service lines at various locations within the City of Muskegon.

Two Contractors submitted bids for this project as follows:

McCormick Sand.....31 Each

Goyette Mechanical.....23 Each

Bids were selected based on a fixed budget and variable scope. Bidders were instructed to bid based on how much work they could complete within a fixed budget with the winning bid going to the company that could complete the most work.

FINANCIAL IMPACT: \$150,000

BUDGET ACTION REQUIRED: None. Funded through grant revenue from MDEQ.

STAFF RECOMMENDATION: Award the project to the low bidder, McCormick Sand.

J. W-91838.3 Water Service Line Replacements Department of Public Works

SUMMARY OF REQUEST: To award contract (W-91838.3) for replacement of water service lines at various locations within the City of Muskegon.

Two Contractors submitted bids for this project as follows:

McCormick Sand.....30 Each

Goyette Mechanical.....27 Each

Bids were selected based on a fixed budget and variable scope. Bidders were instructed to bid based on how much work they could complete within a fixed budget with the winning bid going to the company that could complete the most work.

FINANCIAL IMPACT: \$150,000

BUDGET ACTION REQUIRED: None. Funded through grant revenue from MDEQ.

STAFF RECOMMENDATION: Award the project to the low bidder, McCormick Sand.

K. Legislative Consulting City Manager

SUMMARY OF REQUEST: The City has had the same legislative consultant on retainer for many years. Earlier this year, our consultant retired. Staff is requesting that Main Street Legislative Consulting be engaged to provide this service to the city at a cost of \$2,000 per month.

FINANCIAL IMPACT: \$24,000

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize the City Manager to accept a proposal from Main Street Legislative Consulting.

M. LC Walker Arena – Ironmen Lease City Manager

SUMMARY OF REQUEST: City staff is requesting approval of the lease to allow the West Michigan Ironmen to play indoor football at the LC Walker Arena in 2019. This is a one year lease.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To authorize the Clerk and Mayor to sign the lease with Muskegon Football.

N. LC Walker Arena Performance Agreement City Manager

SUMMARY OF REQUEST: The City is working to host a concert at the LC Walker Arena. We are seeking approval of the performance agreement.

FINANCIAL IMPACT: \$14,000

BUDGET ACTION REQUIRED: None at this time.

STAFF RECOMMENDATION: To authorize the City Manager to enter into the performance agreement with Pegboard Nerds to perform at the LC Walker Arena on Friday, April 5, 2019.

Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga, to approve the consent agenda as presented, except items C and L.

ROLL VOTE: Ayes: Gawron, Hood, Warren, Rinsema-Sybenga, Turnquist, and Johnson

Nays: None

MOTION PASSES

2019-15 ITEMS REMOVED FROM CONSENT:

**C. Amendment to the Medical Marihuana Facilities Licensing Overlay District
– 2nd Reading Planning & Economic Development**

SUMMARY OF REQUEST: The property owner at 185 W. Laketon Avenue is requesting to amend the Medical Marihuana Licensing Facilities Act (MMFLA) Overlay District to include their property within the district.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Staff does not recommend approval of the amendment.

COMMITTEE RECOMMENDATION: At the January 10, Planning Commission meeting, a motion was made to approve the amendment as presented. The Planning Commission voted 6-2 against the motion.

The item was reprised at the February 12, 2019 City Commission meeting with a motion to include the property at 185 W. Laketon into the Medical Marijuana Overlay District. The motion passed with four commissioners voting YES and three commissioners voting NO.

The motion is to amend the zoning ordinance to include 185 W. Laketon Avenue in the Medical Marihuana Facilities Licensing Act Overlay District.

Motion by Commissioner Turnquist, second by Commissioner Johnson, to amend

the zoning ordinance to include 185 W. Laketon Avenue in the Medical Marihuana Facilities Licensing Act Overlay District.

ROLL VOTE: Ayes: Hood, Warren, Rinsema-Sybenga, and Johnson

Nays: Turnquist and Gawron

MOTION PASSES

L. Fertilizer DPW/Parks & Cemetery

SUMMARY OF REQUEST: The Park Supervisor requests that the Commission authorize the amount of \$18,612.00 for two applications of fertilizer for the parks and cemeteries from Harrell's, the only available supplier. Bids were submitted to two other companies: Siteone and Advance Turf Solutions. Neither of them was able to supply the product.

FINANCIAL IMPACT: \$18,612.00

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the request.

Motion by Commissioner Warren, second by Commissioner Rinsema-Sybenga, to approve the request.

ROLL VOTE: Ayes: Warren, Rinsema-Sybenga, Turnquist, Johnson, Gawron, and Hood

Nays: None

MOTION PASSES

2019-16 NEW BUSINESS:

A. Approval of a Neighborhood Enterprise Zone Certificate – 351 W Western
Planning & Economic Development

SUMMARY OF REQUEST: An application for a Neighborhood Enterprise Zone Certificate has been received from 351 Phase II, LLC for the construction of 15 market-rate apartments as part of Phase II of their mixed-use development project. The estimated project cost is \$210,000 per unit. The property was approved as a Neighborhood Enterprise Zone District on May 9, 2017. The applicant has met local and state requirements for the issuance of the NEZ certificate. They have requested the maximum 15 years for the exemption.

FINANCIAL IMPACT: One-half of the previous year's state average principal millage rate will be applied to the value of the facility for a duration of 15 years, with a three-year phase out (they will receive 75% of the abatement in year 13, 50% in year 14 and 25% in year 15).

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the NEZ certificate for 15 years.

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood, to approve NEZ Certificate for 15 years.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren

Nays: None

MOTION PASSES

B. Request for Final Planned Unit Development (PUD) Approval – Hartshorn Village Planning & Economic Development

SUMMARY OF REQUEST: Request for final PUD approval for a mixed-use development at 920,1000, 1010, 1050 and 1060 W. Western Avenue. The development will include 55 single family homes, a clubhouse, and improvements to the Hartshorn Marina and Fricano's Place.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the PUD with some minor conditions listed in the staff report.

COMMITTEE RECOMMENDATION: The Planning Commission approved a motion to recommend approval of the PUD, with the staff recommended conditions by a 7-0 vote, with two members absent.

Motion by Commissioner Johnson, second by Commissioner Warren, to approve the PUD with minor conditions listed in the staff report.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren

Nays: None

MOTION PASSES

C. Land Swap – Damfino Development City Manager

SUMMARY OF REQUEST: Staff previously proposed selling approximately .63 acres of property to Damfino Development after receiving a purchase offer from the group. Commissioners recommended that staff pursue a land swap for a similarly-sized parcel as an alternative. Staff is recommending that the revised offer be considered for approval. The revised offer provides the City of Muskegon with .63 acres of dune land along Lakeshore Drive – this property is adjacent to the city owned parcel located at 2275 Beach Street. In addition to the .63 acres of land, Damfino Development is proposing to contribute \$25,000 to the City's upcoming 150th Anniversary Celebration.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To accept the proposal from Damfino Development and authorize staff to complete the transaction.

Motion by Vice Mayor Hood, second by Commissioner Turnquist, to accept the proposal from Damfino Development and authorize staff to complete the transaction contingent upon adding additional access through an easement, giving access to charter park, and the PUD has to be approved.

ROLL VOTE: Ayes: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren

Nays: None

MOTION PASSES

D. Short Term Vacation Rentals Public Safety

SUMMARY OF REQUEST: The Director of Public Safety requests that the Commission consider approving a stand-alone ordinance "Short Term Vacation Rentals" regulation. The city has experienced an increase in short term vacation rentals over the past couple of years. These specialty rental offerings are not regulated in our current "Housing Rental" ordinance. The ordinance will address applying and receiving a short term rental certificate and a safety inspection of the unit(s). Certificate holders will be responsible for insuring tenants are aware and complies with relevant city ordinances, with a focus on number of occupants, recreational fires, parking, fireworks, noise, and trash to name a few noted problem areas that staff has experienced in an attempt to regulate short term rentals. The requested ordinance will improve neighborhood relations where short term rentals are now located, create a safer and peaceful environment for short term tenants and residents. The staff recommends the annual fee of the Short Term Vacation Rentals to be \$250.00 annually.

FINANCIAL IMPACT: Revenue generated will be put into a separate account to be used for expenses and purchase amenities for parks.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends approval of the short term vacation rentals ordinance.

Motion by Commissioner Warren, second by Commissioner Turnquist, to approve the short term vacation rentals ordinance.

ROLL VOTE: Ayes: Johnson, Gawron, Hood, Warren, Rinsema-Sybenga, and Turnquist

Nays: None

MOTION PASSES

SECOND READING REQUIRED

**E. Concurrence with the Housing Board of Appeals Notice and Order to Demolish Public Safety
1874 Jarman**

REMOVED PER STAFF REQUEST

ANY OTHER BUSINESS: Commissioner Warren reminded everyone of the Resident Appreciation Event coming up on March, 11, 2019 and asked for an update on the parking ordinance amendments for winter which the Chief provided. Commissioner Johnson has requested the City NOT move forward with his previous request of moving forward with special assessment proceedings for burying utility lines on Lakeshore Drive and asked that letters be sent to all interested parties.

PUBLIC PARTICIPATION: Comments were received from the public.

ADJOURNMENT: The City Commission meeting adjourned at 7:57 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC - City Clerk

CITY OF MUSKEGON
GOAL SETTING MEETING

Friday, March 1, 2019
9:00 a.m.
City Commission Chambers
933 Terrace Street
Muskegon, MI 49440

MINUTES

2019-17

Present: Mayor Steve Gawron, Commissioners Turnquist, Warren, Hood, Johnson, and Rinsema-Sybenga

Absent: Commissioner German.

Employees present include: Frank Peterson, Mike Franzak, Jim Maurer, Oneata Bailey, Leo Evans, Leighann Mikesell, Jeff Lewis, Kirk Briggs, Dave Smith, Doug Sayles, Dwana Thompson, Sarah Peterson, Ken Grant, and Ann Meisch.

Welcome

Frank Peterson welcomed the group and introduced Alfredo Hernandez from the Michigan Department of Civil Rights.

Presentation by Alfredo Hernandez, Diversity in the Workplace

Discussion took place about implicit bias and race including many definitions, examples, and how it impacts each of us. Several examples of diversity, bias, and inclusion were given.

Review of Previous Goals

Frank Peterson, City Manager, reviewed the previous goals of the City Commission and gave an update.

Goal Setting

1. Community Safety Plan. Jeff Lewis gave an explanation for the need to have a Community Safety Plan. We need to engage citizens to learn about their safety concerns. What do we do for victims when an offender has not been identified? What should we add or improve? What are we doing now that is working? What is not working? We need a diverse police department. We need quality officers. We need continued training. Residents deserve to feel safe and they need to feel comfortable contacting the police department and know that they will be treated professionally and with empathy. Should we stop the coffee with a cop program if we are not getting the attendance? The suggestion was made to use more door hangers to ask neighbors for assistance when needing assistance with a crime. A follow-up meeting is needed on this topic.

2. Are neighborhood associations in touch with the needs of the majority of the neighbors? How do we get more engagement with the neighborhoods? Oneata is engaging students this summer to knock on doors to inform neighbors about what is happening and assist neighborhood organizations.

3. Equity Discussion Action Items. Training for all staff is needed. We need to train all employees including front line people on implicit bias. We need an organizational review of all policies. An Equal Opportunity policy should be handed to anyone doing work within the City. We should make it known that any abatement we give, we want their workforce that is reflective of our community. We need to seek RFP's for our own buildings to seek more diversity. We have a new business at the LC Walker Arena and we should create a RFP and seek minorities for that location. Discussion of an anti-discrimination ordinance was discussed. We will review the Racial Equity Tool Kit.

Adjourn.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

Date: March 6, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Fireworks Display Permit for Heritage Landing

SUMMARY OF REQUEST: Night Magic is requesting approval of a fireworks display permit for July 4, 2019, at the Heritage Landing. The fire Marshall will inspect the fireworks on the day of the event.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval contingent on inspection of the fireworks and approval of insurance.

FOR USE BY LEGISLATIVE BODY
OF CITY, VILLAGE OR TOWNSHIP
BOARD ONLY

The LEGISLATIVE BODY OF CITY, VILLAGE OR TOWNSHIP BOARD will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this Legislative Body of City, Village or Township Board.

BFS-417 (Rev 01/18)

Application for Fireworks Other Than Consumer or Low Impact

[illegible]

Instructions for Application for Fireworks Other Than Consumer or Low Impact

Applications shall be submitted to the legislative body of a city, village or township board. A permit may be issued as a result of official action by the legislative body. A permit shall be valid only for use within the limits of the jurisdiction of the legislative body of a city, village or township board.

1. Type of Permit – check all boxes that may apply to the type of permit needed. You may select several permit types depending on your fireworks display. You may check with your legislative body of a city, village or township board for assistance when making your selection. Please review the following definitions to determine which type of permit to select:
 - Agricultural or Wildlife Fireworks – devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the US Department of Interior or Michigan DNR.
 - Articles Pyrotechnic – 1.4G fireworks for professional use only that is classified as UN0431 or UN0432.
 - Display Fireworks – 1.3G fireworks for professional use only
 - Special Effects Manufactured for Outdoor Pest Control or Agricultural Purposes – devices with a combination of chemical elements or compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect for pest or animal control.
 - Public Display – a fireworks display that is open to all persons for viewing.
 - Private Display – a fireworks display that is not open to the general public for viewing.
2. Name of applicant – list the name of the applicant. The applicant may be a person representing an organization, group, firm or corporation, or self. If the applicant is also the operator, enter the same name in the operator's section.
3. Address of applicant – complete the address of the applicant; include the street address, city, state and zip code.
4. Name of person or resident agent representing corporation, LLC, DBA or other – list the name of the person or resident agent that represents the corporation, LLC, DBA or other.
5. Address of person or resident agent that represents the corporation, LLC, DBA or other – list the address of the person or resident agent representing the corporation, LLC, DBA or other.
6. Non-resident applicant – list the name of the non-resident applicant. A non-resident applicant shall appoint a Michigan attorney or Michigan resident agent in writing to be the applicant's legal representative upon whom all service of process in any action or proceeding may be served.
7. Name of pyrotechnic operator – list the name of the pyrotechnic operator. The pyrotechnic operator is the person in charge of the display. The legislative body of a city, village or township board shall rule on the competency and qualifications of the operator before granting a permit and may require an affidavit from the applicant as to the operator's experience, former pyrotechnic accidents, criminal record, sobriety, etc.
8. Address of pyrotechnic operator – list the address of the pyrotechnic operator; include the street address, city, state and zip code.
9. Age of the pyrotechnic operator – list the age of the pyrotechnic operator; the operator must be 18 years of age or older.
10. Name of assistant – list the name of the assistant to the pyrotechnic operator;
11. Address of assistant – list the address of the assistant; include the street address, city, state and zip code. If there is more than one assistant, please list additional assistants on a separate sheet and include the address and age of those additional assistants.
12. Age of assistant – list the age of the assistant to the pyrotechnic operator; the assistant must be 18 years or older.
13. Name of other assistant – list the name of other assistant to the pyrotechnic operator.
14. Age of other assistant – list the age of the assistant to the pyrotechnic operator; the assistant must be 18 years or older.
15. Exact location of proposed display – list the address of the exact location of the proposed fireworks display.
16. Date of proposed display – indicate the date of the proposed fireworks display; only one display date can be used per application.
17. Time of proposed display – indicate the time of the proposed fireworks display.
18. Manner and place of storage - indicate the manner and place of storage within the legislative body of a city, village or township board of fireworks that are ready for display, just prior to the display in the area of exhibition. The legislative body of a city, village or township board shall obtain approval from the local fire authorities of the manner and place of storage before any permit is issued.

19. Amount of bond or insurance - the issuing legislative body of a city, village or township board shall set the amount of and proof of bond or insurance for the protection of the public to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of the person, firm or corporation, or any agent or employee of the applicant. The applicant shall assure the bond or insurance required is provided.
20. Name of bonding corporation or insurance company – provide the name of the bonding corporation or insurance company for which the bond was issued through.
21. Address of bonding corporation or insurance company – list the address of the bonding corporation or insurance company; include the street address, city, state and zip code.
22. Number of fireworks and kind of fireworks to be displayed– indicate the total amount of fireworks proposed for the display or use and a description of the type of fireworks for display; such as 10 aerial bombs, 30 aerial rocket bursts, etc.
23. The application is valid for the calendar year in which the application was received and permit was issued.
24. Permit fees shall be established by the legislative body of a city, village or township board and shall be submitted to and retained by legislative body of a city, village or township board.
25. Permitting will be in compliance with the Michigan Fireworks Safety Act, PA 256 of 2011, MCL 28.466, Section 16.
26. **Mail the application to the legislative body of a city, village or township board within the location jurisdiction of the display.** DO NOT mail the application to the Bureau of Fire Services (BFS). If mailed to the BFS, it will be returned to the sender.

Muskegon 4th of July Celebration

Fireworks!

July 04, 2019

\$24,000.00

* * * * *

Opening Barrage

Three Inch Display Shells

24 - Variegated Color Peony Finale Shells

Body Of Display

Three Inch Display Shells

48 - Japanese Style Chrysanthemums

36 - Wizard Special Imported Shells

12 - Titanium Salute with Rising Tail

9 - Guandu Fancy Flight Shells

8 - Red Hearts in flight

6 - Crackling Willows in Flight

6 - Green Strobe Shells in Flight

6 - Red Strobe Shells in Flight

6 - Falling Leaves in Flight

4 - Crackling Nishiki Kamuros in flight

4 - Multi Color Cycas Blooms

4 - Red, White & Blue Peonies in flight

4 - Glittering Silver Strobes in flight

4 - White Strobe Shells in Flight

4 - Smiley Face Shells shot in flight

- 4 - Brocade Crown Flight Shells
- 3 - Titanium Salutes with Rising Tails Shot in Flight

Four Inch Display Shells

- 36 - Guandu Assorted Shells
- 36 - Wizard Special Imported Shells
- 36 - Japanese Style Chrysanthemums
 - 6 - Crackling Willows in Flight
 - 3 - Crackling Nishiki Kamuros in flight
 - 3 - Diadem Waterfalls in Flight
 - 3 - Gold Palm Trees With Green Strobes in flight
 - 3 - Red, White & Blue Peonies in Flight
 - 3 - Smiley Face Shells in flight
 - 3 - Flower Crowns in Flight
 - 3 - Green Strobe Shells in Flight
 - 3 - Red Strobe Shells in Flight
 - 3 - Yung Feng Japanese-Style Chrysanthemums
 - 1 - Red Strobe Sky Girl
 - 1 - Purple Crossette
 - 1 - Silver Crossette
 - 1 - Twitter Glitter

Five Inch Display Shells

- 36 - Wizard Special Imported Shells
- 18 - Guandu Assorted Shells
- 18 - Yuan Yang Japanese Style Shells
 - 3 - Crackling Nishiki Willows in flight
 - 3 - Red, White and Blue Peonies in Flight
 - 3 - Flower Crowns with Pistil in Flight

- 2 - Metai Special Effect Cylinder Shells
- 2 - Yung Feng Japanese-Style Chrysanthemums
- 1 - Red Strobe Sky Girl
- 1 - Purple Crossette
- 1 - Silver Crossette
- 1 - Twitter Glitter
- 1 - Aqua to Variegated Color Flower

Six Inch Display Shells

- 9 - Guandu Assorted Shells
- 9 - Wizzard Brand Display Shell
- 9 - Yuan Yang Japanese Style Shells
- 3 - Yung Feng Display Shell
- 2 - Fancy Color Chrysanthemums and Peonies
- 1 - Brocade to Color Crossette
- 1 - Metai Canister Special Effect
- 1 - Brocade Ring to Saturn Shell
- 1 - Revolving Dragons

Multishot Boxes

- 2 - 36 Shot 2.5" Brocade Crowns
- 2 - 36 Shot Assorted Colors w/tails
- 2 - 36 Shot Willows with Color Tips
- 2 - 50 Shot 2" Titanium Salutes

The Grand Finale

180 - Three Inch Grand Finale Bombshells consisting of Fancy Oriental Shells and Glittering Comets

60 - Three Inch Guandu Specialty Finale Shells

60 - Three Inch Titanium Salute Finale Shells

48 - Three Inch Gold Brocade Finale Shells

15 - Four Inch Grand Finale Bombshells consisting of Special Imported Chrysanthemums and Peonies

9 - Four Inch Gold Brocade Finale Shells

3 - Five Inch Brocade Crown Finale Shells

1 - Six Inch Brocade Crown Canopy Shell

8" 560
\$165 - 120 - 4 -

6" shells
\$57 ish

Contributing Factors of Fireworks Price Increase

- Since July, 2017 there has been a decline of display shell factories from 29 to 13. This has been caused by new government regulations.
- As China's economy has grown, the cost of paper and raw materials has dramatically risen since 2005.
- The wages of the firework factory workers has been increased in order to prevent employee's from taking other jobs in Western Factories.
- Shipping rates rise every year and only one, Maersk, permits hauling display fireworks.
- The import tariff will be increased from 10 to 25 percent on Chinese Products this year by the U.S> Government.

ALL FIREWORK COMPANIES WILL BE AFFECTED!

Date: March 6, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
**RE: Adopt a Resolution Approving On-Premises Tasting
Room Permit at 794 Pine Street**

SUMMARY OF REQUEST: To adopt a resolution approving a new On-Premises Tasting Room Permit application for the Rake Beer Project, LLC at 794 Pine Street.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt the resolution.



Michigan Department of Licensing and Regulatory Affairs
Liquor Control Commission (MLCC)
Toll Free: 866-813-0011 • www.michigan.gov/lcc

Business ID: _____
Request ID: _____
(For MLCC use only)

Local Government Approval For On-Premises Tasting Room Permit
(Authorized by MCL 436.1536)

Instructions for Applicants:

- You must obtain a recommendation from the local legislative body for a new On-Premises Tasting Room Permit 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 _____ City of Muskegon _____ 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 Rake Beer Project, LLC _____
(name of applicant - If a corporation or limited liability company, please state the company name)

for a **NEW ON-PREMISES TASTING ROOM PERMIT**
to be located at: 794 Pine Street, Muskegon, MI 49442

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

Commission Meeting Date: March 12, 2019

Date: March 5, 2019
To: Honorable Mayor and City Commissioners
From: Finance
**RE: Notice of Intent Resolution Sanitary Sewer and Water
Supply Revenue Bonds**

SUMMARY OF REQUEST: The Notice of Intent Resolution is the first step in the bonding process. This resolution authorizes the publication of a Notice of Intent relating to the City's bonds issued for the purpose of paying all or part of the cost to acquire, construct, furnish and equip improvements to the Sanitary Sewer and Water Supply System, including sewer system and water supply system rehabilitation and replacement of existing sewer and water lines, together with pump station improvements and treatment plant improvements. The notices indicate the City's intent to issue Sanitary Sewer System Revenue bonds not to exceed \$8,500,000 and Water Supply System Revenue bonds not to exceed \$2,000,000.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the Notices of Intent Resolutions for Sanitary Sewer System Revenue Bonds not to exceed \$8,500,000 and Water Supply System Revenue Bonds not to exceed \$2,000,000.

**NOTICE OF INTENT RESOLUTION
SANITARY SEWER SYSTEM REVENUE BONDS, SERIES 2019
(STATE REVOLVING FUND PROJECT)**

CITY OF MUSKEGON
County of Muskegon, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, held on the 12th day of March, 2019, at 5:30 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member: _____
and supported by Member: _____:

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), has determined that it is necessary for the public health, safety and welfare of the City to acquire, construct, furnish and equip improvements to the Sanitary Sewer System of the City (the "System"), including sewer system rehabilitation and replacement of existing sewer lines, together with pump station improvements and all related appurtenances and attachments (the "Project"); and

WHEREAS, the City has been advised by the Michigan Department of Environmental Quality ("MDEQ") that financial assistance to accomplish the acquisition and construction of all or a portion of the Project is available through the State Revolving Fund ("SRF") loan program administered by the MDEQ and the Michigan Finance Authority; and

WHEREAS, the City has made application for participation in the SRF loan program; and

WHEREAS, the Revenue Bond Act, Act 94, Public Acts of Michigan, 1933, as amended ("Act 94"), provides a means for financing the purchase, acquisition, construction, improvement, enlargement, extension and repair of public improvements such as the Project through the issuance of revenue bonds; and

WHEREAS, the issuance of bonds payable from revenues of the System under Act 94 in a total amount not to exceed Eight Million Five Hundred Thousand Dollars (\$8,500,000) (the "Bonds") for the purpose of financing all or part of the Project represents the most practical means to that end; and

WHEREAS, a notice of intent to issue revenue bonds must be published before the issuance of the Bonds in order to comply with the requirements of Section 33 of Act 94; and

WHEREAS, the City intends at this time to state its intentions to be reimbursed from

proceeds of the Bonds for any expenditures undertaken by the City for the Project prior to issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Clerk is authorized and directed to publish a notice of intent to issue bonds in the *Muskegon Chronicle*, a newspaper of general circulation in the City.

2. The notice of intent shall be published as a display advertisement not less than one quarter (1/4) page in size in substantially the form attached to this resolution as Exhibit A.

3. The City Commission does hereby determine that the foregoing form of Notice of Intent to Issue Bonds, and the manner of publication directed, is adequate notice to the electors of the City and users of the System, and is the method best calculated to give them notice of the City's intent to issue the Bonds, the purpose of the Bonds, the security for the Bonds, and the right of referendum of the electors with respect thereto, and that the provision of forty-five (45) days within which to file a referendum petition is adequate to insure that the City's electors may exercise their legal rights of referendum, and the newspaper named for publication is hereby determined to reach the largest number of persons to whom the notice is directed.

4. The City makes the following declarations for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended:

- (a) As of the date hereof, the City reasonably expects to reimburse itself for the expenditures described in (b) below with proceeds of debt to be incurred by the City.
- (b) The expenditures described in this paragraph (b) are for the costs of acquiring the Project which were paid or will be paid subsequent to sixty (60) days prior to the date hereof from the Sanitary Sewer System funds of the City.
- (c) The maximum principal amount of debt expected to be issued for the Project, including issuance costs, is \$8,500,000.
- (d) A reimbursement allocation of the expenditures described in (b) above with the proceeds of the borrowing described herein will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the related Project are placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the debt to be issued for the Project to reimburse the City for a capital expenditure made pursuant to this resolution.

5. Miller, Canfield, Paddock and Stone, P.L.C. is hereby confirmed as Bond Counsel to the City in connection with the issuance of the Bonds.

6. Robert W. Baird & Co., Inc. is hereby confirmed as the registered municipal advisor to the City in connection with the issuance of the Bonds.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members:_____

NAYS: Members:_____

RESOLUTION DECLARED ADOPTED.

Ann Marie Meisch, MMC
City Clerk

I hereby certify that the attached is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on the 12th day of March, 2019, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976 and that minutes of the meeting were kept and will be or have been made available as required by said Act.

Ann Marie Meisch, MMC
City Clerk City Clerk

EXHIBIT A

NOTICE TO TAXPAYERS AND ELECTORS OF THE CITY OF MUSKEGON AND TO USERS OF THE CITY'S SANITARY SEWER SYSTEM OF INTENT TO ISSUE REVENUE BONDS AND THE RIGHT OF REFERENDUM RELATING THERETO

PLEASE TAKE NOTICE that the City Commission of the City of Muskegon, Muskegon County, Michigan, intends to issue and sell revenue bonds pursuant to Act 94, Public Acts of Michigan, 1933, as amended, in one or more series in a total amount not to exceed Eight Million Five Hundred Thousand Dollars (\$8,500,000), for the purpose of paying all or part of the cost to acquire, construct, furnish and equip improvements to the Sanitary Sewer System of the City (the "System"), including sewer system rehabilitation and replacement of existing sewer lines, together with pump station improvements and all related appurtenances and attachments.

SOURCE OF PAYMENT OF REVENUE BONDS

THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS SHALL BE PAYABLE from the revenues received by the City from the operations of the Sanitary Sewer System except as provided below in the case of bonds sold to the Michigan Finance Authority in connection with the State of Michigan's State Revolving Fund program. The revenues will consist of rates and charges billed to the users of the system, a schedule of which is presently on file in the office of the City Clerk. The rates and charges may from time to time be revised to provide sufficient revenues to provide for the expenses of operating and maintaining the system, to pay the principal of and interest on the bonds and to pay other obligations of the system.

BOND DETAILS

THE REVENUE BONDS will be payable in annual installments not to exceed twenty (20) in number and will bear interest at the rate or rates to be determined at public or private sale but in no event to exceed such rates as may be permitted by law on the unpaid balance from time to time remaining outstanding on said bonds.

ADDITIONAL SOURCES OF PAYMENTS FOR BONDS SOLD TO MICHIGAN FINANCE AUTHORITY

IN THE EVENT THAT THE REVENUE BONDS ARE SOLD TO THE MICHIGAN FINANCE AUTHORITY, THE CITY MAY PLEDGE FOR THE PAYMENT OF THE BONDS MONEY RECEIVED OR TO BE RECEIVED BY THE CITY DERIVED FROM IMPOSITION OF TAXES BY THE STATE AND RETURNED OR TO BE RETURNED TO THE CITY AS PROVIDED BY LAW, except for money the use of which is prohibited for such purposes by the State Constitution. The City may enter into an agreement providing for the payment of taxes, which taxes are collected by the State and returned to the City as provided by law, to the Michigan Finance Authority or a trustee, and such funds may be pledged for the payment of the revenue bonds.

IN THE EVENT THAT THE REVENUE BONDS ARE SOLD TO THE MICHIGAN

FINANCE AUTHORITY, THE CITY MAY PLEDGE ITS LIMITED TAX FULL FAITH AND CREDIT AS SECURITY FOR THE REVENUE BONDS, IN WHICH EVENT DEBT SERVICE ON THE BONDS SHALL BE PAYABLE EITHER FROM REVENUES OF THE SYSTEM OR FROM AD VALOREM TAXES THAT MAY BE LEVIED ON ALL TAXABLE PROPERTY IN THE CITY, SUBJECT HOWEVER, TO CONSTITUTIONAL, STATUTORY AND CHARTER TAX RATE LIMITATIONS.

RIGHT OF REFERENDUM

THE REVENUE BONDS WILL BE ISSUED WITHOUT A VOTE OF THE ELECTORS UNLESS A PETITION REQUESTING SUCH A VOTE SIGNED BY NOT LESS THAN 10% OF THE REGISTERED ELECTORS OF THE CITY IS FILED WITH THE CITY CLERK WITHIN FORTY-FIVE (45) DAYS AFTER PUBLICATION OF THIS NOTICE. IF SUCH PETITION IS FILED, THE BONDS MAY NOT BE ISSUED WITHOUT AN APPROVING VOTE OF A MAJORITY OF THE QUALIFIED ELECTORS OF THE CITY VOTING THEREON.

THIS NOTICE is given pursuant to the requirements of Section 33, Act 94, Public Acts of Michigan, 1933, as amended.

ADDITIONAL INFORMATION will be furnished at the office of the City Clerk upon request.

Ann Marie Meisch, MMC
City Clerk, City of Muskegon

33086198.1\063684-00046

**NOTICE OF INTENT RESOLUTION
WATER SUPPLY SYSTEM REVENUE BONDS, SERIES 2019
(DRINKING WATER REVOLVING FUND PROJECT)**

CITY OF MUSKEGON
County of Muskegon, State of Michigan

Minutes of a regular meeting of the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, held on the 12th day of March, 2019, at 5:30 p.m., prevailing Eastern Time.

PRESENT: Members _____

ABSENT: Members _____

The following preamble and resolution were offered by Member: _____
and supported by Member: _____:

WHEREAS, the City of Muskegon, County of Muskegon, State of Michigan (the "City"), has determined that it is necessary for the public health, safety and welfare of the City to acquire, construct, furnish and equip improvements to the Water Supply System of the City (the "System"), including distribution system improvements, replacement of water mains and service lines and treatment plant improvements, together with all related appurtenances and attachments (the "Project"); and

WHEREAS, the City has been advised by the Michigan Department of Environmental Quality ("MDEQ") that financial assistance to accomplish the acquisition and construction of all or a portion of the Project is available through the Drinking Water Revolving Fund ("SRF") loan program administered by the MDEQ and the Michigan Finance Authority; and

WHEREAS, the City has made application for participation in the SRF loan program; and

WHEREAS, the Revenue Bond Act, Act 94, Public Acts of Michigan, 1933, as amended ("Act 94"), provides a means for financing the purchase, acquisition, construction, improvement, enlargement, extension and repair of public improvements such as the Project through the issuance of revenue bonds; and

WHEREAS, the issuance of bonds payable from revenues of the System under Act 94 in a total amount not to exceed Two Million Dollars (\$2,000,000) (the "Bonds") for the purpose of financing all or part of the Project represents the most practical means to that end; and

WHEREAS, a notice of intent to issue revenue bonds must be published before the issuance of the Bonds in order to comply with the requirements of Section 33 of Act 94; and

WHEREAS, the City intends at this time to state its intentions to be reimbursed from proceeds of the Bonds for any expenditures undertaken by the City for the Project prior to issuance

of the Bonds.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The City Clerk is authorized and directed to publish a notice of intent to issue bonds in the *Muskegon Chronicle*, a newspaper of general circulation in the City.

2. The notice of intent shall be published as a display advertisement not less than one quarter (1/4) page in size in substantially the form attached to this resolution as Exhibit A.

3. The City Commission does hereby determine that the foregoing form of Notice of Intent to Issue Bonds, and the manner of publication directed, is adequate notice to the electors of the City and users of the System, and is the method best calculated to give them notice of the City's intent to issue the Bonds, the purpose of the Bonds, the security for the Bonds, and the right of referendum of the electors with respect thereto, and that the provision of forty-five (45) days within which to file a referendum petition is adequate to insure that the City's electors may exercise their legal rights of referendum, and the newspaper named for publication is hereby determined to reach the largest number of persons to whom the notice is directed.

4. The City makes the following declarations for the purpose of complying with the reimbursement rules of Treas. Reg. § 1.150-2 pursuant to the Internal Revenue Code of 1986, as amended:

- (a) As of the date hereof, the City reasonably expects to reimburse itself for the expenditures described in (b) below with proceeds of debt to be incurred by the City.
- (b) The expenditures described in this paragraph (b) are for the costs of acquiring the Project which were paid or will be paid subsequent to sixty (60) days prior to the date hereof from the Water Supply System funds of the City.
- (c) The maximum principal amount of debt expected to be issued for the Project, including issuance costs, is \$2,000,000.
- (d) A reimbursement allocation of the expenditures described in (b) above with the proceeds of the borrowing described herein will occur not later than 18 months after the later of (i) the date on which the expenditure is paid, or (ii) the date the related Project are placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid. A reimbursement allocation is an allocation in writing that evidences the City's use of the proceeds of the debt to be issued for the Project to reimburse the City for a capital expenditure made pursuant to this resolution.

5. Miller, Canfield, Paddock and Stone, P.L.C. is hereby confirmed as Bond Counsel

to the City in connection with the issuance of the Bonds.

6. Robert W. Baird & Co., Inc. is hereby confirmed as the registered municipal advisor to the City in connection with the issuance of the Bonds.

7. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

AYES: Members: _____

NAYS: Members: _____

RESOLUTION DECLARED ADOPTED.

Ann Marie Meisch, MMC
City Clerk

I hereby certify that the attached is a true and complete copy of a resolution adopted by the City Commission of the City of Muskegon, County of Muskegon, State of Michigan, at a regular meeting held on the 12th day of March, 2019, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976 and that minutes of the meeting were kept and will be or have been made available as required by said Act.

Ann Marie Meisch, MMC
City Clerk City Clerk

EXHIBIT A

NOTICE TO TAXPAYERS AND ELECTORS OF THE CITY OF MUSKEGON AND TO USERS OF THE CITY'S WATER SUPPLY SYSTEM OF INTENT TO ISSUE REVENUE BONDS AND THE RIGHT OF REFERENDUM RELATING THERETO

PLEASE TAKE NOTICE that the City Commission of the City of Muskegon, Muskegon County, Michigan, intends to issue and sell revenue bonds pursuant to Act 94, Public Acts of Michigan, 1933, as amended, in one or more series in a total amount not to exceed Two Million Dollars (\$2,000,000), for the purpose of paying all or part of the cost to acquire, construct, furnish and equip improvements to the Water Supply System of the City (the "System"), including distribution system improvements, replacement of water mains and service lines and treatment plant improvements, together with all related appurtenances and attachments.

SOURCE OF PAYMENT OF REVENUE BONDS

THE PRINCIPAL OF AND INTEREST ON THE REVENUE BONDS SHALL BE PAYABLE from the revenues received by the City from the operations of the Water Supply System except as provided below in the case of bonds sold to the Michigan Finance Authority in connection with the State of Michigan's Drinking Water Revolving Fund program. The revenues will consist of rates and charges billed to the users of the system, a schedule of which is presently on file in the office of the City Clerk. The rates and charges may from time to time be revised to provide sufficient revenues to provide for the expenses of operating and maintaining the system, to pay the principal of and interest on the bonds and to pay other obligations of the system.

BOND DETAILS

THE REVENUE BONDS will be payable in annual installments not to exceed twenty (20) in number and will bear interest at the rate or rates to be determined at public or private sale but in no event to exceed such rates as may be permitted by law on the unpaid balance from time to time remaining outstanding on said bonds.

ADDITIONAL SOURCES OF PAYMENTS FOR BONDS SOLD TO MICHIGAN FINANCE AUTHORITY

IN THE EVENT THAT THE REVENUE BONDS ARE SOLD TO THE MICHIGAN FINANCE AUTHORITY, THE CITY MAY PLEDGE FOR THE PAYMENT OF THE BONDS MONEY RECEIVED OR TO BE RECEIVED BY THE CITY DERIVED FROM IMPOSITION OF TAXES BY THE STATE AND RETURNED OR TO BE RETURNED TO THE CITY AS PROVIDED BY LAW, except for money the use of which is prohibited for such purposes by the State Constitution. The City may enter into an agreement providing for the payment of taxes, which taxes are collected by the State and returned to the City as provided by law, to the Michigan Finance Authority or a trustee, and such funds may be pledged for the payment of the revenue bonds.

IN THE EVENT THAT THE REVENUE BONDS ARE SOLD TO THE MICHIGAN

FINANCE AUTHORITY, THE CITY MAY PLEDGE ITS LIMITED TAX FULL FAITH AND CREDIT AS SECURITY FOR THE REVENUE BONDS, IN WHICH EVENT DEBT SERVICE ON THE BONDS SHALL BE PAYABLE EITHER FROM REVENUES OF THE SYSTEM OR FROM AD VALOREM TAXES THAT MAY BE LEVIED ON ALL TAXABLE PROPERTY IN THE CITY, SUBJECT HOWEVER, TO CONSTITUTIONAL, STATUTORY AND CHARTER TAX RATE LIMITATIONS.

RIGHT OF REFERENDUM

THE REVENUE BONDS WILL BE ISSUED WITHOUT A VOTE OF THE ELECTORS UNLESS A PETITION REQUESTING SUCH A VOTE SIGNED BY NOT LESS THAN 10% OF THE REGISTERED ELECTORS OF THE CITY IS FILED WITH THE CITY CLERK WITHIN FORTY-FIVE (45) DAYS AFTER PUBLICATION OF THIS NOTICE. IF SUCH PETITION IS FILED, THE BONDS MAY NOT BE ISSUED WITHOUT AN APPROVING VOTE OF A MAJORITY OF THE QUALIFIED ELECTORS OF THE CITY VOTING THEREON.

THIS NOTICE is given pursuant to the requirements of Section 33, Act 94, Public Acts of Michigan, 1933, as amended.

ADDITIONAL INFORMATION will be furnished at the office of the City Clerk upon request.

Ann Marie Meisch, MMC
City Clerk, City of Muskegon

33087596.1\063684-00047

Date: 3/12/2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Amity Bridge – Resolution of Support for Bridge Funding
Application and Commitment for Matching Funds

SUMMARY OF REQUEST:

The Engineering Department would like to apply for bridge preservation funding through the Michigan Department of Transportation. These funds would be used to remove the Amity bridge and build a new roadway on fill. The bridge was originally constructed to cross a railroad line that no longer exists.

Construction is estimated at \$415,000, and the city would be required to provide matching funds of approximately \$90,000 plus engineering costs. Funding is available starting in 2022.

The MDOT application requires a resolution of support and commitment for the matching funds.

FINANCIAL IMPACT:

\$200,000 split over fiscal year 21/22 and 22/23

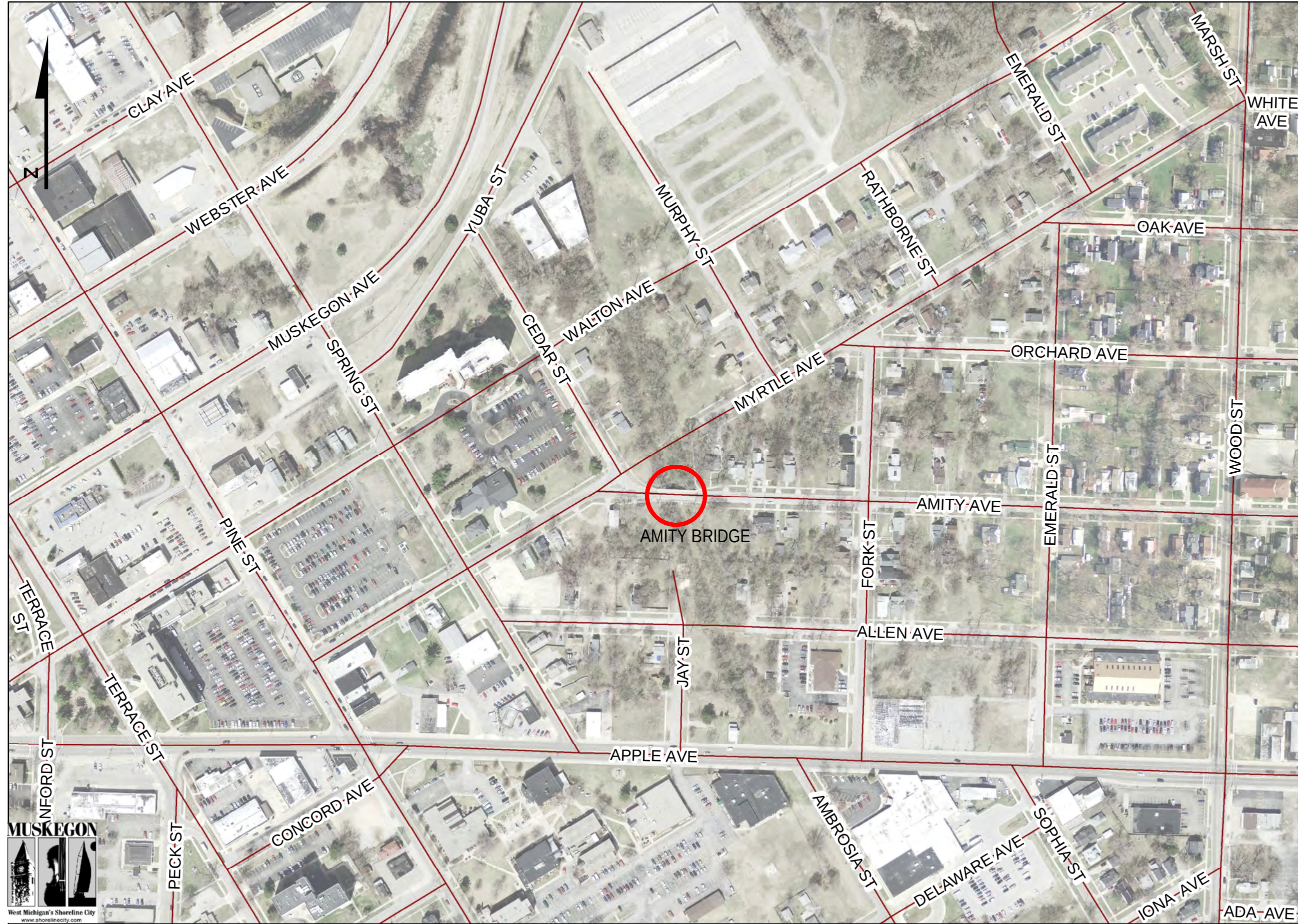
BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

Approve the resolution of support for the bridge preservation fund application and commit to funding the required match and engineering costs.

Amity Bridge and surrounding area



City of Muskegon

RESOLUTION

SUPPORT OF APPLICATION FOR BRIDGE PRESERVATION FUNDS

WHEREAS, Muskegon City Commissioners desire to promote safety and fiscal responsibility for the residents and visitors of our great city; and

WHEREAS, Muskegon City Commissioners acknowledge there is no longer a need for the bridge carrying Amity Street over the abandoned railroad; and

WHEREAS, Muskegon City Commissioners agree that removing the Amity bridge and rebuilding the roadway on fill reduces the future costs of maintenance; and

NOW, THEREFORE LET IT BE RESOLVED, that Muskegon City Commissioners support the application for federal and state bridge preservation funds and commit to funding required match dollars for removal of the bridge.

Dated this _____ of _____ 20__.

Stephen J. Gawron
Mayor

Ann Marie Meisch
City Clerk

Date: 3/12/2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Resolution of Authority to Sign Street Lighting Contracts with
Consumers Energy

SUMMARY OF REQUEST:

Approve the resolution of authority to sign contracts with Consumers Energy to facilitate modifications to no more than 10 street lights per contract.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approve the resolution.

City of Muskegon

RESOLUTION

AUTHORITY TO SIGN CONTRACTS WITH CONSUMERS ENERGY FOR STREETLIGHT MODIFICATIONS

WHEREAS, Muskegon City Commissioners desire efficient government; and

WHEREAS, Muskegon City Commissioners understand that modifications to the street lighting system are needed on a fairly regular basis; and

NOW, THEREFORE LET IT BE RESOLVED, that Muskegon City Commissioners give the Public Works Director authority to sign street lighting contracts with Consumers Energy for no more than 10 individual street light modifications.

Dated this _____ of _____ 20__.

Stephen J. Gawron
Mayor

Ann Marie Meisch
City Clerk

Date: 3/12/2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: Authorized Representative for County Wastewater Committee

SUMMARY OF REQUEST:

Approve the resolution to designate the Public Works Director as the authorized representative to the Muskegon Municipal Wastewater Management Committee. Retain the City Manager as the alternate representative to this committee. Authorize both to vote on behalf of the city in all business related to this committee.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Approve the resolution.

City of Muskegon

RESOLUTION

DESIGNATE AUTHORIZED REPRESENTATIVE FOR MUSKEGON MUNICIPAL WASTEWATER MANAGEMENT COMMITTEE

WHEREAS, Muskegon County operates a wastewater system; and

WHEREAS, the City of Muskegon contracts with Muskegon County for wastewater treatment;
and

WHEREAS, the parties served by the Muskegon County Wastewater Management System entered into a master contract in 2010 which established the Muskegon Municipal Wastewater Management Committee; and

WHEREAS, the city has appointed a new Public Works Director;

NOW, THEREFORE LET IT BE RESOLVED, that Muskegon City Commissioners designate Leo Evans, the Public Works Director, as the City's Authorized Representative to the Muskegon Municipal Wastewater Management Committee; and

That Muskegon City Commissioners continue the designation of the City Manager, Franklin Peterson, as the City's Alternate Representative to the same committee; and

That the Authorized Representative and Alternate Representative are hereby authorized to vote on the City's behalf at committee meetings.

Dated this _____ of _____ 20__.

Stephen J. Gawron
Mayor

Ann Marie Meisch
City Clerk

Date: 3/12/2019
To: Honorable Mayor and City Commissioners
From: Department of Public Works
RE: Heritage Association Streetlight Easements

SUMMARY OF REQUEST:

Authorize the mayor and clerk to sign easements with various property owners for city access to the lamp style streetlights in Heritage Village that are located on private property. Since the city will be responsible for future operation and maintenance, access to these lights is necessary.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

Authorize the mayor and clerk to sign the easements.

Date: 3/12/2019
To: Honorable Mayor and City Commissioners
From: Department of Public Works
RE: Heritage Village Streetlights

SUMMARY OF REQUEST:

Accept ownership of the 26 lamp style streetlights in Heritage Village. The city will be responsible for future operation and maintenance. All streetlights have been upgraded, are in working condition, and have been retrofitted with LED lamps.

FINANCIAL IMPACT:

Cost of future operation and maintenance

BUDGET ACTION REQUIRED:

Account for operation and maintenance in future budgets

STAFF RECOMMENDATION:

Accept ownership of the streetlights.

Commission Meeting Date: February 28, 2019

Date: March 12th, 2019

To: Honorable Mayor & City Commission

**From: Community and Neighborhood Services
Department**

RE: Request for Authorization to Sign

SUMMARY OF REQUEST: Request to authorize Oneata Bailey, CNS Director, to sign as an authorized person on behalf of the City.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: To approve the authorizing resolution and direct the Mayor and Clerk to sign the resolution. Oneata Bailey has been signing agreements on behalf of the City since 2010.

COMMITTEE RECOMMENDATION: None

MUSKEGON CITY COMMISSION

RESOLUTION TO AUTHORIZE ONEATA BAILEY, CNS DIRECTOR, AS
AN AUTHORIZED PERSON TO SIGN AGREEMENTS ON BEHALF OF
THE CITY OF MUSKEGON.

WHEREAS, the City of Muskegon is dedicated to the redevelopment of its
neighborhoods and;

WHEREAS, the City of Muskegon is dedicated to assisting low-moderate
income families;

WHEREAS, the City of Muskegon is dedicated to promoting high quality
affordable single-family housing in the community and;

WHEREAS, the City of Muskegon is dedicated to promoting
homeownership throughout its neighborhoods;

NOW THEREFORE, BE IT RESOLVED that the City Commission hereby
approves Director of Community and Neighborhood Services, Oneata
Bailey, as an authorized person to sign agreements on behalf of the City
of Muskegon.

Adopted this 12th of March, 2019.

Ayes:

Nays:

By _____
Stephen J. Gawron, Mayor

By _____
Ann Marie Meisch, MMC City Clerk

COMMISSION MEETING DATE February 26, 2019

Date: March 6, 2019

To: Honorable Mayor and City Commissioners

From: Jeffrey Lewis, Director of Public Safety

RE: Short Term Vacation Rentals – 2nd Reading

SUMMARY OF REQUEST:

The Director of Public Safety requests that the Commission consider approving a stand-alone ordinance “Short Term Vacation Rentals” regulation. The city has experienced an increase in short term vacation rentals over the past couple of years. These specialty rental offerings are not regulated in our current “Housing Rental” ordinance. The ordinance will address applying and receiving a short term rental certificate and a safety inspection of the unit(s). Certificate holders will be responsible for insuring tenants are aware and complies with relevant city ordinances, with a focus on number of occupants, recreational fires, parking, fireworks, noise, and trash to name a few noted problem areas that staff has experienced in an attempt to regulate short term rentals. The requested ordinance will improve neighborhood relations where short term rentals are now located, create a safer and peaceful environment for short term tenants and residents. The staff recommends the annual fee of the Short Term Vacation Rentals to be \$250.00 annually.

FINANCIAL IMPACT:

Revenue generated will be put into a separate account to be used for expenses and purchasing amenities for parks.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the short term vacation rentals ordinance.

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

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

1. Chapter 10, Article VI of the Code of Ordinances of the City of Muskegon, Michigan, Section 353 is adopted to read as follows:

Sec. 10-353. Short Term Vacation Rentals.

(a) Purpose. This section, concerning the registration of short term vacation rentals in the city, is enacted to protect the health, safety and welfare of persons in the city by providing the city with the information necessary to ensure compliance with safety, structure and fire laws, identify business activities and establishments which affect or involve matters related to traffic, congestion, occupancy and density of occupancy, the physical condition of places where persons are renting as short term vacation rentals, and the enforcement of the law, including local, state and federal laws, rules and regulations, applying to short term vacation rentals located in the city.

(b) Definitions. In addition to the definitions provided for in Section 10-281, the following terms shall mean:

Business Activity shall mean the advertising for lease or rental of any structure for a short term vacation rental.

Family shall mean

(1) An individual or group of two (2) or more persons related by blood, marriage, or adoption, together with foster children and attendants of the principal occupants who are domiciled together as a single housekeeping unit in a dwelling unit; or

(2) A collective number of individuals domiciled together in one (1) dwelling unit whose relationship is of a continuing, non-transient domestic character and who are cooking and living as a single nonprofit housekeeping unit. This definition shall not include any society, club, fraternity, sorority, association, half-way house, lodge, coterie, organization, group of students, or other individuals whose domestic relationship is of a transitory or seasonal nature, or is otherwise

not intended to be of a permanent nature. Said definition shall not apply in instances of group care centers or state licensed residential facilities as established under P.A. 395 of 1976.

(3) Living arrangements which would otherwise comply with the description of a family shall not constitute a family if the said arrangements have occurred as a result of commercial or other advertising, or the offering of rooms for rent. Any financial arrangement, except a true sharing of the expenses of all the facilities in the single household unit shall be presumed to constitute renting a room or rooms and to have resulted from the offering of rooms for rent or commercial or other advertising. Where rooms have been rented, or persons live in the house in response to commercial advertising or the offering of rooms for rent, the living arrangement shall be presumed to constitute a rooming house and not a family. A person claiming the status of family shall have the burden of proof of each of the elements set forth in the relevant definitions of this ordinance.

Remuneration shall mean the act of paying or compensating a person for use of a short term vacation rental.

Short term vacation rental means a commercial use which is subordinate to the residential use of a dwelling unit, in which a tenant is allowed to lease the dwelling unit or a portion of the dwelling unit for periods of less than one calendar month but more than 24 hours in return for remuneration. The rental of transitional houses operated by a charitable organization, group homes such as nursing homes, and adult foster care homes, substance abuse rehabilitation clinics, mental health facilities and other similar health care related facilities shall not be considered short term vacation rentals.

Short term vacation rental unit means a dwelling unit used for at least one short term rental within a calendar year.

- (c) Requirements. No person shall operate or conduct, maintain or manage or advertise for lease a short term vacation rental establishment without first obtaining a certificate of short term vacation rental registration in the manner provided in this chapter and if the owner has more than three short term vacation rental establishments a business registration.
- (d) Application procedure. An applicant for a certificate of short term vacation rental registration shall make application to the Director of Public Safety or his designee on a form prescribed by the Director of Public Safety or his designee, which shall contain at least the following information:

- (1) The full names, business addresses and residence addresses of the owners, proprietors, officers and local addresses of all owners, proprietors and officers and managers of the applicant's business; the names and addresses of each officer, if

the applicant is a corporation; the names and addresses of all partners, if a partnership; and the names and addresses of all members, if a limited liability corporation.

(2) A list of all assumed, trade or firm names under which the registered applicant intends to do business.

(3) The location of the short term vacation rental.

(4) The name, telephone number, address, e-mail address and cell phone number for text messages of the person to notify in the event of an emergency.

(e) Terms. Each certificate of short term vacation rental registration issued pursuant to this chapter shall be for a duration not to exceed one year and shall terminate on April 30, following issuance thereof.

(f) Renewal. Any certificate of short term vacation rental registration issued under this section must be renewed in the manner set forth in this article on or before April 30 of each year of existence of the short term vacation rental. Applications for renewal of a certificate of short term vacation rental registration shall be filed, considered and issued in the same manner as an original application.

(g) Fees. The fee for a certificate of short term vacation rental registration and the fees for annual renewals thereof shall be set from time to time by resolution of the city commission. Registration fees not paid within 30 days of the due date will be subject to a late fee of \$15.00 per month for each month up to a maximum of six months, at which time all fees and late fees are due. Municipal civil infraction violation may be issued each day after May 31 until the registration is submitted and fees are paid.

The City may use the fee only for expenses relating to issuance of the certificate short term vacation rental registration and the purchasing of amenities located in the City's parks likely to be used by tenants of short term vacation rentals. Any fees not expended within the fiscal year from collection shall be held in a separate City account which may only be used for amenities or located in the City's parks likely to be used by tenants of short term vacation rentals.

(h) Display. Any certificate of short term vacation rental registration issued pursuant to this Section shall be prominently displayed in the business establishment on the back of the front door or the back of the door at the main entrance.

(i) General conditions for issuance and continuing in effect.

(1) Compliance with other governmental requirements; preemption. No certificate of short term vacation rental registration shall be issued or continued in effect for any person who has failed to pay the Excise Tax on Business of Providing Accommodations pursuant to MCL Section 141.861. The fact that a person has

received a license or permit from the United States, the state, the county, or other governmental entity for the short term vacation rental shall not exempt such person from the requirements of this chapter.

(2) Compliance with all other laws. A holder of a certificate of short term vacation rental registration must be in continuing compliance with all local, county, state and federal laws relating to rental properties as a condition of issuance or continued effect of a certificate of registration under this chapter.

(3) Conditions and activities on the premises. The holder of a certificate of short term vacation rental registration shall maintain a clean, neat and orderly establishment, take reasonable steps to provide security on the premises, and prevent unlawful conduct thereon. The holder of the certificate of short term vacation rental registration shall be responsible for insuring that everyone staying at the short term rental unit is aware of and complies with all relevant city ordinance, especially relating to recreational fires, parking, fireworks, noise and trash.

(4) Payment of amounts owed city. All personal property taxes and outstanding debts to the city, including, without limitation, fees for inspections or property services, water or sewer bills, municipal civil infraction fines applicable to the business or its premises, current special assessment installments, but not including real property or income taxes, due at the time of issuance or renewal of a certificate related to the business activity or establishment must be paid in full.

(5) Standards in chapter. Each holder of a certificate of short term vacation rental registration shall comply with the requirements found in additional applicable Sections of this Chapter.

(j) Additional conditions for issuance.

(1) Compliance with applicable codes and regulations. Any person applying for or holding a certificate of short term vacation rental registration under this Section shall demonstrate to authorized city personnel that the business establishment registered under this chapter complies with all construction and fire and safety codes of the city, all applicable health and safety laws, zoning laws and environmental laws and regulations of the city, the county, the state, or the United States, and including all provisions of this chapter. Further, affiant shall comply with special conditions promulgated pursuant to Section 10-353(j)(2).

(2) Special conditions. In connection with the registrations pursuant to this Section, regulations which are particularly adapted and appropriate to the business activity or establishment so registered shall be promulgated by the city, approved by the city commission, and attached to or printed upon the registration issued. Such attachments and adoptions shall not be required for codes, ordinances and other regulations of general applicability which are in effect from time to time in

the city and which affect the registered business. These regulations shall be uniform for all short term vacation rentals.

Campers, recreational vehicles, tents or any other temporary housing shall be prohibited at a short term vacation rental, except the structure inspected and permitted by the City. Non-compliance with this sub-section may result in a civil infraction for the renter, owner and/or revocation of the certificate of short term vacation rental registration.

(k) Inspections. Every business establishment registered shall afford authorized personnel from the city full access to the premises for the purpose of inspection to determine compliance with the registration which has been issued, for determination in connection with the application for the issuance of the registration, and to determine continuing compliance with all ordinances, codes and statutes applicable to the premises, the business establishment or the business activity. In the case of a proposed revocation or suspension, the holder of the registration shall afford reasonable opportunity for inspection by the city.

(l) Denial, revocation, suspension and procedure for revocation or suspension. Holders of a certificate of short term vacation rental registration may be denied, suspended, or revoked by the Director of Public Safety and the business registration by the city clerk, both of whom shall follow the procedures provided for in City Code Section 50-43.

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

This ordinance adopted: February 12, 2019

Ayes:

Nays:

First Reading:

Second Reading:

CITY OF MUSKEGON

By: _____
Ann Marie Meisch, MMC
City Clerk

CERTIFICATE

The undersigned, being the duly qualified Clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 12th day of February, 2019, at which meeting a quorum was present and remained throughout, and that the meeting was conducted and public notice was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan of 1976, as amended, and that minutes were kept and will be or have been made available as required thereby.

Date: _____, 2019

Ann Marie Meisch, MMC
City Clerk

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

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

TO: ALL PERSONS INTERESTED

Please take notice that on _____, 2019, the City Commission of the City of Muskegon amended Chapter 10, Article VI, by adopting Section 10-353 of the Muskegon City Code, summarized as follows:

INSERT SUMMARY

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

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

Published: _____, 2019

CITY OF MUSKEGON

By _____
Ann Marie Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE

Date: 3/12/2019
To: Honorable Mayor and City Commissioners
From: Department of Public Works
RE: Public Hearing for DWRF Project Plan

SUMMARY OF REQUEST:

Conduct a public hearing related to the DWRF Project Plan that was posted for public comment on February 10th, 2019 and approve the Resolution to adopt the plan.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Conduct public hearing and approve the resolution.

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

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

WHEREAS, the City of Muskegon authorized Prein&Newhof to prepare a Project Plan, which recommends improvements is to provide a more reliable and resilient water distribution system, replace aging water mains and lead service lines, which can cause elevated lead concentrations in homes. The improvements will be in areas that are already being disturbed by construction as part of wastewater system improvements being conducted in 2019 and 2020; and

WHEREAS, said Project Plan was presented at a Public Hearing held on March 12, 2019 and all public comments at the hearing or written comments submitted during the public comment period have been considered and addressed.

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

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

Yeas:

Nays:

I certify that the above Resolution was adopted by the City Commission of the City of Muskegon on March 12, 2019.

BY: Ann Meisch, City Clerk

Signature

Date

Commission Meeting Date: March 12, 2019

Date: March 7, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
**RE: Public Hearing - Request to Establish an Obsolete Property District
– 1937 Lakeshore Dr**

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Ghezzi Investments, LLC has requested the establishment of an Obsolete Property District for their property at 1937 Lakeshore Dr. The establishment of the Obsolete Property District would allow them to apply for an Obsolete Property Rehabilitation Exemption Certificate.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the creation of the district.

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. _____

A resolution establishing an Obsolete Property Rehabilitation District.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

- A. The City of Muskegon has been designated as a qualified local government unit for the purpose of establishing Obsolete Property Rehabilitation Districts and approving Applications for Obsolete Property Rehabilitation Exemption Certificates.
- B. The area located in the land described in this resolution is known to the City Commission and is clearly characterized by the presence of obsolete commercial property, and the land and improvements are obsolete commercial property.
- C. Notice has been given by certified mail to the owners of all real property within the proposed Obsolete Property Rehabilitation District and a hearing has been held offering an opportunity to all owners and any other resident or taxpayer of the City to appear and be heard. Said notice was given at least ten (10) days before the hearing.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

- 1. That the property described in this resolution and proposed as an Obsolete Property Rehabilitation District is characterized by obsolete commercial property.
- 2. That the obsolete commercial property, the subject of this resolution, as is described in Attachment A.
- 3. That the City Commission hereby establishes an Obsolete Property Rehabilitation District on the lands and parcels set forth in the attached description.

This resolution passed.

Ayes _____

Nays _____

CITY OF MUSKEGON

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on March 12, 2019. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By _____
Ann Meisch, City Clerk

ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON REVISED PLAT OF 1903 SWLY 55 FT LOT 2 & NELY 22 FT LOT 3
BLK 627

Commission Meeting Date: March 12, 2019

Date: March 6, 2019
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing - Request to issue an Obsolete Property Certificate – Ghezzi Investments, LLC

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Ghezzi Investments, LLC has requested the issuance of an Obsolete Property Certificate for their property located at 1937 Lakeshore Dr. Total capital investment for this project is estimated to be \$1,100,000 and will include the addition of nine apartments and four commercial spaces. The applicant is eligible for a 12-year abatement because of the amount of investment.

FINANCIAL IMPACT:

If an Obsolete Property Certificate is issued, the property taxes would be frozen at the pre-rehabilitated rate for the duration of the certificate.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the Obsolete Property Rehabilitation Exemption Certificate

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO.

A resolution approving the application for an Obsolete Property Rehabilitation Exemption Certificate by Ghezzi Investments, LLC.

The City Commission of the City of Muskegon hereby RESOLVES:

Recitals

- A. The City Commission has received an Application for an Obsolete Property Rehabilitation Exemption Certificate from Ghezzi Investments, LLC, to apply to the improvements located in an Obsolete Property Rehabilitation District established by previous resolution. All items described under "Instructions" (a) through (f) of the application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the City of Muskegon, the Qualified Local Government Unit, by the applicant.
- B. The City of Muskegon is a qualified local governmental unit as determined by STC Bulletin No. 9 of 2000, dated July 12, 2000.
- C. An Obsolete Property Rehabilitation District in which the application property is located was established after a hearing on March 12, 2019.
- D. The taxable value of the property proposed to be exempt, plus the aggregate taxable value of properties already exempted under PA 146 of 2000 and under PA 198 of 1974, does not exceed five percent (5%) of the total taxable value of the City of Muskegon.
- E. In the event it is determined that the said taxable values do exceed five percent (5%), the City Commission determines further that the said exceedance will not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of any affected taxing units.
- F. This resolution of approval is considered by the City Commission on March 12, 2019, after a public hearing as provided in Section 4(2) of PA 146 of 2000. The hearing was held on this date.
- G. The applicant, Ghezzi Investments, LLC is not delinquent any taxes related to the facility.
- H. The exemption to be granted by this resolution is for twelve (12) years and no extensions will be granted.
- I. The City Commission finds that the property for which the Obsolete Property Rehabilitation Exemption Certificate is sought is obsolete property within the meaning of Section 2(h) of Public Act 146 of 2000 in that the property, which is commercial, is functionally obsolete. The City has received from the applicant all the items required by Section 9 of the application form, being the general description of the obsolete facility, a general description of the proposed use, a description of the general nature and extent of the rehabilitation to be undertaken, a descriptive list of fixed building equipment that will be part of the rehabilitated facility, a time schedule for undertaking and complete the rehabilitation, and statement of the economic advantages expected from the exemption.
- J. Commencement of the rehabilitation has not occurred before the establishment of the district.

- K. The application relates to a rehabilitation program that when completed will constitute a rehabilitated within the meaning of PA 146 of 2000 and will be situated within the Obsolete Property Rehabilitation District established by the City under PA 146 of 2000.
- L. Completion of the rehabilitated facility is calculated to and will, at the time of the issuance of the Certificate, have the reasonable likelihood to increase commercial activity and create employment; it will revitalize an urban area. The rehabilitation will include improvements aggregating more than ten percent (10%) of the true cash value of the property at the commencement of the rehabilitation.
- M. The City Commission determines that the applicant shall have twenty-four (24) months to complete the rehabilitation. It shall be completed by March 12, 2021, or two years after the Certificate is issued, whichever occurs later.
- N. That notice pursuant to statute has been timely given to the applicant, the assessor for the City of Muskegon, representatives of the affected taxing units and the general public.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. Based upon the statements set forth in, and incorporating the recitals to this resolution, the City Commission hereby approves the application filed by Ghezzi Investments, LLC for an Obsolete Property Rehabilitation Exemption Certificate, to be effective for a period of twelve (12) years and no extensions will be granted;
2. BE IT FURTHER RESOLVED, that this resolution of approval relates to the property set forth in Attachment A, the legal description containing the facilities to be improved;
3. BE IT FURTHER RESOLVED, that, as further condition of this approval, the applicant shall comply with the representations and conditions set forth in the recitals above and in the application material submitted to the City.

This resolution passed.

Ayes: _____

Nays: _____

CITY OF MUSKEGON

BY: _____

Stephen J. Gawron
Mayor

ATTEST: _____

Ann Meisch
Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission held on March 12, 2019. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By _____
Ann Meisch, City Clerk

ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON REVISED PLAT OF 1903 SWLY 55 FT LOT 2 & NELY 22 FT LOT 3 BLK 627

A. General description of existing building:

Built in 1921 as the Rivoli Theater

Original Use: single movie theater

Recent Use: second theater added 1981

Number of stories: 2

Square footage: 62' x 115' main floor

= 7,130

20' x 62' second floor = 1,240

Total square footage = 8,370

B. General description of proposed use:

9 apartments

4 commercial/retail

C. General nature and extent of rehabilitation – 2 story building

4 commercial/retail units on street level open to front (north side)

9 apartments

3 apartments facing front (north side) with balcony's – only top floor

2 apartments facing south side – only top floor

4 apartments facing east side that are top and lower floor

4 garages street level on south side

Remove most of existing east side of theater that has a quansit hut roof that needs removal – once removed adding a second story for 2 story apartments

D. Description list of fixed building equipment to be used

14 – electric services – 1 each unit and 1 house meter

13 – furnaces and air conditioners

9 – apartment kitchens

4 – commercial break rooms

17 – bathrooms total

5 – 1 bath apartments

4 – 2 bath apartments

4 – commercial/retail

10 – laundry units

9 – apartments

1 – possible commercial/retail

E. Time schedule for undertaking and completing:

14 - months after being issued all building permits - bearing in mind weather permitting

Exterior is mostly brick which can be completed during fair weather

*Total
when complete
14,260.00*

A court yard running down east side of lot
approximately 14' wide x 120' long to be completed
weather permitting – court yard is for entrance to east
side apartments

F. Statement of economic advantages expected from
exemption

Creating jobs for commercial/retail use needed in the
area

Creating living areas needed with possibility of work
and live in some building

Date: March 6, 2019
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Recommendation for Annual Renewal of Liquor Licenses

SUMMARY OF REQUEST: To adopt a resolution recommending non-renewal of those liquor license establishments who are in violation of Section 50-146 and 50-147 of the Code of Ordinances for the City of Muskegon. These establishments have been found to be in non-compliance with the City Code of Ordinances and renewal of their liquor licenses should not be recommended by the City Commission. If any of these establishments come into compliance by March 12, 2019, they will be removed from this resolution, and recommendation for their renewal will be forwarded to the Liquor Control Commission.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adoption of the resolution.

RESOLUTION RECOMMENDING STATE WITHHOLD RENEWAL OF LIQUOR LICENSES FOR CODE VIOLATIONS

Resolution #

THE CITY COMMISSION OF THE CITY OF MUSKEGON DO RESOLVE, that whereas, the attached business establishments in the City of Muskegon have liquor licenses and are found to be in violation of Article V, Section 50-146 and 50-147 of the Code of Ordinances of the City of Muskegon.

AND WHEREAS, a hearing was held on March 12, 2019, before the City Commission to allow such licensees an opportunity to refute the determination of the City Commission that such establishments are in non-compliance with the City Code of Ordinances and renewal of their liquor licenses should not be recommended by the City Commission; and

WHEREAS, an affidavit of mailing of Notices of Hearing and Notification of Non-Compliance to City Standards to the licensees has been filed;

NOW, THEREFORE, BE IT RESOLVED, that the City Commission of the City of Muskegon hereby recommends that these liquor licenses not be approved for renewal, and a copy of this Resolution be sent to the State Liquor Control Commission. If any of these establishments come into compliance by March 14, 2017, they will be removed from this Resolution.

Approved and adopted this 12th day of March, 2019.

AYES:

NAYS:

By: _____
Ann Marie Meisch, MMC
City Clerk

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: March 6, 2019

RE: Marsh Field Passport Grant Application

SUMMARY OF REQUEST:

Marsh Field is in need of a number of improvements. Muskegon Baseball has asked that the City submit a passport grant application to address some of those needs, including: universally-accessible dugouts, play equipment, walkway improvements, accessible picnic seating, and drinking fountains. The total cost of the improvements are estimated at \$300,000. The City's match would be \$150,000.

This request is being filed under public hearing to allow for public comment/input, although there is not a formal public hearing requirement in the grant process.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To approve the resolution authorizing the submission of the grant application and the financial commitment of \$150,000 to match the funds received; local funds to be expenses from the Public Improvement Fund in FY 2019-20.

COMMITTEE RECOMMENDATION:

RECREATION PASSPORT GRANT PROGRAM

RESOLUTION OF AUTHORIZATION – LOCAL UNIT OF GOVERNMENT WITHOUT DONATED FUNDS

2019-21(E)

WHEREAS, The City of Muskegon supports the submission of an application titled, “Marsh Field Park Improvements” to the Recreation Passport Grant Program for improvements including Universally Accessible Dugouts, Swings, Merry-Go-Round, Walkways, Picnic tables and Drinking Fountains at Marsh Field Park in the City of Muskegon; and,

WHEREAS, the proposed application is supported by the Community’s 5-Year Approved Parks and Recreation Plan on November 24, 2015.

WHEREAS, the City of Muskegon is hereby making a financial commitment to the project in the amount of \$150,000.00 matching funds, in cash and/or force account; and,

NOW THEREFORE, BE IT RESOLVED that the City of Muskegon hereby authorizes submission of a Recreation Passport Grant Program Application for \$150,000, and further resolves to make available its financial obligation amount of \$ 150,000 of a total \$300,000.00 project cost, during the 2020-2021 fiscal year.

AYES: Rinsema-Sybenga, Turnquist, Johnson, Gawron, Hood, and Warren

NAYES: None

ABSENT: German

MOTION APPROVED.

I HEREBY CERTIFY, that the foregoing is a Resolution duly made and passed by City of Muskegon City Commission at their regular meeting held on March 12, 2019, at 5:30 p.m., with a quorum present.

Clerk

Dated: _____

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: March 6, 2019

RE: LC Walker Arena – Lumberjacks Lease

SUMMARY OF REQUEST:

City staff is requesting approval of the attached lease with the Muskegon Lumberjacks. This is a long-term lease with multiple extension opportunities. A financial analysis sheet is attached to the lease to assist commissioners in quickly identifying the key financial changes in the new agreement.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To authorize the Clerk and Mayor to sign the lease.

COMMITTEE RECOMMENDATION:

None.

SHARED USE AGREEMENT

This shared use agreement (the “Agreement”) is entered into effective July 1, 2019, between the **City of Muskegon**, a municipal corporation, of 933 Terrace Street, Muskegon, Michigan 49440 (“City”) and **WC Hockey, LLC**, a Michigan limited liability company, of 13854 Simone Drive, Shelby Township, Michigan 48315 (“Lumberjacks”) (collectively, the “Parties”) with reference to the following facts:

A. The City of Muskegon is the owner of the L.C. Walker Arena and Conference Center located at 470 West Western Avenue, Muskegon, Michigan 49440 (“Arena”).

B. The City desires to permit the Lumberjacks shared use of a portion of the Arena for use in connection with the operation of a USHL junior hockey franchise commonly known as the “Muskegon Lumberjacks”, or any other hockey organization that the Lumberjacks become affiliated with, in accordance with the terms and conditions of this Agreement.

B. The City acknowledges that the Lumberjacks are the primary user of the Arena and that the Lumberjacks have the first rights to the Arena for all hockey games and hockey related events, and as otherwise set forth herein, such that wherever reasonably possible any discrepancies or conflicts with the Lumberjack games, including playoff games, will be resolved in favor of the Lumberjacks.

In consideration of the mutual covenants and obligations set forth herein, the Parties agree as follows:

1. **Shared Space.** City agrees to permit the Lumberjacks to use, and Lumberjacks agree to jointly occupy with the City, those portions of the Arena described and identified on attached **Exhibit A** (collectively, the “Shared Space”), subject to the terms and conditions of this Agreement. Attached as **Exhibit B** is a diagram that sets forth those portions of the Shared Space that shall be used exclusively by Lumberjacks and the City and those that will be shared with the City and other occupants of the Arena, and the terms according to which such shared use shall be permitted to occur, it being the understanding of the parties that the Lumberjack’s use of the Shared Space shall take precedence over the City and other occupants of the Arena.

Notwithstanding the identification of the current Leased Space on Exhibit A, it is understood and agreed that the City may in the future relocate certain portions of the Shared Space (e.g. training room, Lumberjacks offices). The Lumberjacks are amenable to such relocations provided the relocated portions of the Shared Space are comparable to the current spaces being occupied by the Lumberjacks. In any event, the parties agree to work together in good faith to determine the location and physical layout of such relocated portions of the Shared Space.

In consideration of payment of Rent and the Facility Fee (as defined herein below), in addition to the Shared Space, the City agrees to provide Lumberjacks the following:

- All ice time for all Lumberjack hockey preseason games, home games, playoff games and all practices for home and visiting USHL teams (collectively referred to as “Lumberjacks Hockey Dates”)
- Lumberjacks shall have first priority regarding the scheduling of exhibition games, playoff games and two camps held during the year.
- Lumberjacks shall host, at no additional cost, a Tryout Camp for the period of five consecutive days during May or June of each year this Agreement is in effect. If the Lumberjacks agree to host any other events (such as hockey tournaments, additional camps) requiring ice time, the cost will be \$185 per hour, subject to increasing the amount by the Price Escalator in Paragraph 4 A.

- Lumberjacks shall provide to City the dates of all preseason games and home games no later than July 10 for the following 12 months.
- Lumberjacks will have access to the ice time for scheduled practice times each day from 10:00 a.m. to 11:30 a.m. and again from 2:00 p.m. to 3:45 p.m. with the understanding that the Lumberjacks will end practice on non-game days by 3:45 p.m., which will allow the City to generate additional revenue.
- On game days, use of the ice shall be in accordance with the standards established for all USHL teams by the League Office: (a) no on-ice events may be scheduled or permitted during the two hours before any scheduled Lumberjack home hockey game; (b) with permission of Arena Manager, use of ice for a “morning skate” for the Lumberjacks and its visiting opponent.
- For every home hockey game, beginning four hours before the game, Lumberjacks shall have exclusive use of the parking lot adjacent to the rear of the Arena (“Lot A”) for any purpose within their sole discretion. The Lumberjacks agree to reserve six (6) spaces in Lot A for use by the sports rehabilitation clinic that will occupy the Annex, during the clinic’s normal business hours.
- Lumberjacks will be granted ten (10) days per year at no charge under this Agreement to produce hockey or non-hockey related special events (“Additional Events”). Notwithstanding the waiver of any rental fee for Additional Events, the Lumberjacks shall be responsible to pay for all agreed upon costs and expenses related to “set up” the Arena to conduct each Additional Event (e.g. take down glass, cover ice, etc).
- During the first year of this Agreement, the Lumberjacks have agreed to provide certain game night management operations for all Lumberjack Hockey Dates. Such management shall be limited: ushers, ticket takers, security, game operations, video and PA services, off-ice officials and the Box office personnel and staffing (“The Game Night Operations”). In return for providing The Game Night Operations, the City will reduce the team’s annual rent by \$40,000 per year, which will be prorated among the regular season hockey games and the Minimum Gross Rent in Paragraph 4(c) will be adjusted accordingly. The \$40,000 annual amount will be subject to increase starting in year 3 of this Agreement pursuant to the Price Escalator referenced in Paragraph 4(a) below. In the event the Lumberjacks elect to no longer provide The Game Night Operations, it shall provide written notice to the City. Notwithstanding such notice, the Lumberjacks agree to continue to provide The Game Night Operations through the end of the then-current USHL hockey season.
- The City will provide all operations management for the Additional Events, except for those management services that will be provided by the Lumberjacks, which are limited to the following: ushers, ticket takers, security, game operations, video and PA services, off-ice officials and the Box office personnel and staffing.
- City agrees that the Lumberjacks shall continue to be permitted to access and use the Peak Performance Center in the same manner as is currently exercised. In the event the City elects to change the current use of the Peak Performance space into a non-fitness/rehab/training facility, the City agrees to provide the Lumberjacks, with no interruption of access to and use of a training facility, a suitable space within the Arena to perform off-ice training commensurate with that currently used by the Lumberjacks. The time/space requirements of the Lumberjacks include:
 - 1) Monday – Wednesday’s 10-11am & 11am -12 pm and shooting throughout the day
 - 2) Thursdays and Fridays extra work and shooting throughout the day
 - 3) Friday, Saturday & Sundays Pre-Game Stretch and post-game cool down
 - 4) Stretching area for future camps
 - 5) Usage as needed when approved by Peak Staff member

2. **RP Hockey Shared Use Agreement.** The City has entered into a shared use agreement with the Reeths Puffer High School Hockey team (“RP Hockey”), which will soon be coming up for renewal. The City and the Lumberjacks will mutually work together to allow the RP Hockey team to renew its agreement as long as none of the provisions of that document conflict with the Lumberjacks requirements as set forth in this Agreement.

3. **Term.** The term of this Agreement shall be two years beginning July 1, 2019 – June 30, 2021 with the Lumberjacks, at their sole discretion, having three (3), five-year options (each an “Option Term”). Each option must be exercised on or before six month’s before the expiration of the then-current term.

4. **Rent/Facility Fee.** During the Term and any Option Term, Lumberjacks shall pay the City an annual sum of the following amounts, which amount shall be paid on a quarterly basis:

a. **Base Rent.** \$125,000 per year, which covers the use of all space as specified in Paragraph 1. This Base Rent will increase two (2) percent during the First Option period – years 3-7 to \$127,500; four-percent during the Second Option Period (years 8-12) for a total of \$132,600 and an additional four-percent during the Third Option Period (years 13-17) for a total of \$137,800. Many of the terms in this Agreement are subject to the Base Rent increase above of two percent, four percent and four percent and will be referred to in this Agreement as the “Price Escalator.”

b. **Ticket Surcharge.** In addition to Base Rent, the Lumberjacks agree to allow the City to implement a ticket surcharge of \$1.00 per each ticket sold. It is the understanding of the Parties that during the First option period this ticket surcharge will be increased to \$1.25 per each ticket sold and during the Second and Third option period, the ticket surcharge will be limited to \$1.50 per ticket sold. It is the mutual understanding of the parties that the ticket surcharge will increase to \$2.00 per ticket sold after the completion of the last year of the Third option period.

c. **Minimum Gross Revenues.** The City and the Lumberjacks agree that the Lumberjacks will guarantee a minimum of \$225,000 in Gross Revenue for each year of the Shared Use Agreement. Gross Revenue includes all monies received by the City with respect to the Shared Use Agreement, including but not limited to Base Rent, Ticket Surcharge, Concessions, Merchandise, Signage and any and all other sponsorship or promotional opportunities related to the Arena that may arise in the future. Any Minimum Gross Revenue deficiency will be calculated as of June 30th of each year and will be paid within forty-five (45) days of being determined.

5. **Co-Licensee under MLCC License.** The City is the owner of a certain Class C License (No.1962-2015) issued by the Michigan Liquor Control Commission (“MLCC”) for the sale of alcohol within the Arena (“License”). The MLCC has previously approved the Lumberjacks being added as a co-licensee of the License. It is the mutual desire of the Parties that the Lumberjacks be dropped as a co-licensee, Lumberjacks agree to immediately prepare and file with the MLCC all necessary forms and documents in order to effectuate the “drop” of Lumberjacks as a co-licensee with the City. At all times during the pendency of the “drop” of Lumberjacks as co-Licensee, Lumberjacks and City shall keep the License in good standing with the MLCC.

6. **City’s Obligations as to Shared Space.** To the extent that the City rents the Arena or hosts an event on the ice surface, it shall not interfere with the Lumberjacks access to or use of the ice for any Lumberjack hockey games, practices, scheduled hockey related events or any other approved non-hockey events conducted by Lumberjacks pursuant to separate agreements with the City.

7. **Repairs and Maintenance.**

- a. **City's Requirement for Repair and Maintenance.** At all times during the Term or Additional Year, the City, at its sole expense, shall be responsible to keep and maintain and repair the Arena and Shared Space, and every part thereof, including, but not limited to, the ice floor, home team and visiting team locker rooms, seating, common areas, the parking lots serving the Arena, all Zambonis and the Zamboni area, structural, nonstructural, roof, interior and exterior portions of the buildings, the boiler, the dehumidification system, lighting and electrical, sound, plumbing and other improvements located upon the Arena, in good and sanitary order, condition and repair, and at all times suitable for the uses of the Arena and Shared Space contemplated by Lumberjacks and the City in entering into this Agreement, except for reasonable use and wear thereof. As such, the City shall guarantee the facility is in good working order.
- b. **Cure Period if Repair and/or Maintenance Obligations are Not Met.** If the City does not perform any of its Repair and/or Maintenance Obligations, upon a seven (7) day written cure period, the team shall be permitted to remedy any deficient repair or maintenance issue and may, at its option, deduct any reasonable expenses from the rent and adjust the Minimum Gross Revenue set forth in paragraph 4c accordingly. In the event any particular repair or maintenance is deemed by the Lumberjacks, in its reasonable discretion, to be an emergency that cannot wait for the expiration of the seven (7) day cure period, it may undertake to make such repair or perform such maintenance and shall be permitted to deduct such expenses incurred from rent as set forth above.
- c. **Cure Period for Other Defaults by the City.** In addition to Repair and Maintenance Obligations, the City has other requirements that it must meet with respect to the Shared Agreement, for example, quality of concessions and merchandise. With respect to any Default by the City relating to any provisions of the Shared Agreement, The Lumberjacks may use the Cure provision set forth in Paragraph 7b.

8. **Utilities.** During the Term or Additional Year, the City shall maintain in its own name all gas, heat, light, power, water and sewer supplied to Lumberjacks at the Arena.

9. **Concessions and Merchandise.**

- a. The City will sell all concessions during the Lumberjack Hockey Dates and the Additional Events and will provide the Lumberjacks with twenty-percent (20%) of the gross revenue. The City will also market and manage the team store, which includes but is not limited to Lumberjacks merchandise. The City will provide Lumberjacks with twenty-percent (20%) of the gross revenue from all Jack's merchandise sold. For both the Concession and Merchandise, it is important to the parties that the Lumberjacks are able to maintain their quality and team reputation by insuring the quality of concessions and merchandise, the amount of merchandise inventory levels and the pricing and quality of any Jack's merchandise and concessions. As such, the parties shall mutually agree in advance to the saleable concessions, merchandise levels, product quality and pricing of any Jack's merchandise sold by the City.

- b. For all Lumberjack Hockey Dates and Additional Events, the City, through its concession and/or Merchandise manager, will provide a detailed report of the revenue generated for the Lumberjacks and make such report available within twenty-four (24) hours of the event and payments to the Lumberjacks will be made within seven (7) days of the event.

10. **Box Office.** The Lumberjacks will manage all box office operations.

11. **Parking.** As part of the Base Rent, the City will guarantee 1,000 parking spaces within 1,500 feet of the Arena on Lumberjacks Hockey Dates (“Lumberjacks Parking Area”). Additionally, Lot A is included in the Base Rent on game days starting no later than 3:00 p.m. Of the 1,000 parking spaces, any Lumberjack season ticket holder issued a parking pass shall not be charged for parking within the Lumberjacks Parking Area. Of the remaining 1,000 parking spaces not allocated to Lumberjack season ticket holders, the City and the Lumberjacks must mutually agree in advance upon any price to be charged to such customers, as well as the split of any revenues generated therefrom.

12. **Sponsorship and Advertising.**

a. Shared Sponsorships. The Lumberjacks and the City agree to split 50/50 any and all net revenue from the 9 sponsorship packages included in Exhibit C. This split also includes any additional sponsorship or promotional opportunities related to the Arena that may arise in the future.

b. Jack’s Advertising Revenue. All Advertising revenue for the Lumberjacks Hockey Dates and Additional Events, including game night signage, on-ice advertising, including but not limited to dasher boards, center-ice scoreboard and Zamboni, SHALL BE solely the revenue of the Lumberjacks.

13. **Building Access.** The City shall provide Lumberjacks keys to access the Arena using the rear doors along Shoreline Drive, and keys to access to the Shared Space. The Arena manager for the City will retain a key to the Shared Space should authorized personnel need access.

14. **Capital Construction and Arena Modifications.**

a. Capital Construction. Subject to the mutual agreement of the City and the Lumberjacks as to certain improvements to the Stage, Club Loge and moving the Videoboard, the Lumberjacks agree to pay the upfront costs of such improvements. However, if the Lumberjacks extend this Agreement to the First Option Period (years 3-7), the City agrees to reimburse the Lumberjacks its payment of the upfront costs at a rate of twenty (20) percent in each of the years 3-7.

b. Arena Modifications. The City agrees that it will not make any modifications to the Arena without the express written consent of the Lumberjacks, such consent to not be unreasonably withheld. However, the condition for agreeing to any arena modifications must include that the modifications will not adversely impact the Lumberjacks’ use and enjoyment of the Shared Space for its intended purpose. Prior to any arena modifications the City and Lumberjacks shall work together in good faith to confirm that such modifications will not have any adverse impact on the Lumberjacks.

c. Additional Lease Space, Future Restaurants, Pubs or Retail Space. The City agrees that it will not engage in any additional leases, Shared Use Agreements or rental arrangements that impact the Shared Space without the mutual agreement of the City and the Lumberjacks to the extent there is any impact whatsoever on the Lumberjacks use of the Shared Space for the purposes set forth in this Agreement (e.g. the issue of patrons of tenants having access to the Arena in order to view Lumberjack's hockey games and any Additional Events or conversely the issue of patrons of the Lumberjacks having access to the tenant's venue.) The City anticipates leasing space for two additional restaurants along the Western Ave. side of the Arena. To the extent this occurs, the City and the Lumberjacks shall work together prior to the execution of the restaurant leases to ensure that they contain provisions that protect Lumberjacks from being adversely impacted by such tenancy; to the extent this occurs, the City will use reasonable efforts to ensure that the Lumberjacks are not materially and adversely impacted by such tenancy, provided, however, that a commercially reasonable decrease in concession sales due to a restaurant opening in the Arena shall not be deemed to be such an impact.

d. Rad Dad's Lease. The City acknowledges that the Rad Dad rental agreement will need to be amended, or a new agreement will need to be executed in connection with Rad Dad's being added as a co-licensee to the MLCC License. The City agrees that it shall work with Rad Dad's and the Lumberjacks to ensure that any such amended or new lease shall contain provisions that address the issues set forth in Paragraph 14(c) above.

15. **Rules & Regulations.** It is acknowledged and agreed by the Parties hereto that the rules and regulations that are posted in and about the Arena, as amended from time to time by the City, shall be incorporated into this Agreement and Lumberjacks agree to abide by them in its use of the Arena.

16. **Insurance.** Lumberjacks shall, at its sole cost and expense, obtain and maintain liability insurance necessary to protect Lumberjacks and the City from all claims for damages to property and persons related to the use of the Arena and the Shared Space, including but not limited to commercial general liability insurance. Such liability insurance shall provide limits of not less the One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate for each bodily injury, property damage and personal injury. The City shall be named as an additional insured in any such policy, and Lumberjacks shall furnish to The City certificates of insurance or other appropriate documentation (including evidence of renewal of insurance) evidencing all coverage required hereunder. Such certificates or other documentation shall include a provision whereby the City must receive not less than thirty (30) days notice prior to any coverage cancellation or any material change in coverage. Any such cancellation or material change in coverage shall not relieve Lumberjacks of the continuing obligation to maintain insurance coverage in accordance with this Agreement.

17. **Default.**

a. **By Lumberjacks.** The violation of any term, provision or condition of this Agreement by Lumberjacks, including the failure to pay any amounts owed to the City shall be an event of default. Notwithstanding the foregoing, prior to declaring a default, the City agrees to provide Lumberjacks with a written notice of default, specifying the nature of the default, and what actions are required to be taken by Lumberjacks to cure the default. Lumberjacks shall have three (3) business days thereafter to cure the default, provided Lumberjacks shall have such extended period as may be required beyond the three (3) business days if the nature of the cure is such that it reasonably requires more than three (3) business days and Lumberjacks commence the cure within the three (3) business day period and thereafter continuously and diligently pursues the cure to completion. In such event, the City may suspend Lumberjacks' continued use of the Arena and Shared Space until such time as Lumberjacks cures the default. Upon the expiration or early termination of this Agreement, Lumberjacks shall be permitted to remove all

personal property and removable equipment owned by Lumberjacks from the Arena, which removal shall occur within a reasonable time (not to exceed 14 days) following expiration or termination. In the event of a non-monetary default and a failure of Lumberjacks to cure as provided above, the City may elect to terminate this Agreement as its sole remedy. In the event of a monetary default, in addition to terminating this Agreement, the City shall be permitted to initiate legal proceeding to recover any monies owed under this Agreement. In such event, the prevailing party in any litigation or other legal proceedings arising under this Agreement shall be entitled to reimbursement from the non-prevailing party for reasonable attorneys' fees and expenses.

b. **By the City.** The violation of any term, provision or condition of this Agreement by the City, including the failure to perform any of its obligations under this Agreement, shall be an event of default. Notwithstanding the foregoing, prior to declaring a default, Lumberjacks agrees to provide the City with a written notice of default, specifying the nature of the default, and what actions are required to be taken by the City to cure the default. The City shall have three (3) business days thereafter to cure the default, provided the City shall have such extended period as may be required beyond the three (3) business days if the nature of the cure is such that it reasonably requires more than three (3) business days and the City commences the cure within the three (3) business day period and thereafter continuously and diligently pursues the cure to completion. In the event that the City fails to cure the default, and such default substantively and materially interferes with the use of the Shared Space for the purpose agreed to by the City and Lumberjacks, Lumberjacks are permitted to undertake any actions necessary to cure the default, and if such cure requires the expenditure of money, Lumberjacks shall be entitled to deduct said amount from Rent or Facility Fee next coming due to the City under this Agreement. Notwithstanding for foregoing, in the event that the City receives a notice of default from Lumberjacks and in good faith disputes that both the existence of the default and its obligation to effectuate the requested cure, the failure to immediately undertake the requested cure shall not provide the grounds to permit Lumberjacks from curing the default and deducting monies expended from Rent or Facility Fee next coming due to the City under this Agreement. The prevailing party in any litigation or other legal proceedings arising under this Agreement shall be entitled to reimbursement from the non-prevailing party for reasonable attorneys' fees and expenses.

18. **City Participation.** For each year of the Shared Use Agreement, including any Option periods, the City agrees to purchase a \$20,000 advertising package which includes 15 season tickets in the Jacks Club, a Party Deck on Opening Night for 75 people, 150 tickets for the Boys and Girls Club and a Party Deck with 100 tickets on Saturday night in January, which event shall include the Jack's Meal Deal and the team wearing mutually agreed upon City Specialty Jerseys. The above prices are subject to the Price Escalator in Paragraph 4A.

19. **Scoreboard and Personal Property.** In consideration of the long-term partnership between the Lumberjacks and the City, the Lumberjacks agree to relinquish all rights to the video board and scoreboard, which will become the sold property of the City. The City must maintain the video board and scoreboard and keep them in good working condition, otherwise the Lumberjacks may maintain the system and charge the City for any such deficient conditions. Additionally, the City acknowledges that nothing contained in this Agreement is "personal property" to the Lumberjacks and that the City will be responsible for all personal property taxes incurred as part of the Shared Space set forth in paragraph 1.

20. **Assignment.** Lumberjacks may assign this Agreement, or any right or obligation under this Agreement to any third party approved by the USHL Board of Commissioners to operate a USHL junior hockey franchise or any other hockey organization that the Lumberjacks become affiliated with. In the event that the City no longer owns, leases or manages the Arena, the City agrees to assign this Agreement to any successor owner, lessee or manager of the Arena, each of whom shall agree to assign this Agreement to any future successor owner, lessee or manager. The City shall provide written notice of any such assignment to Lumberjacks, identifying the new party.

21. **Amendment and Waiver.** This Agreement may be amended only in writing signed by both parties. The provisions of this Agreement may be waived only in writing signed by the party waiving compliance. The failure of any party at one time to require performance of any provision of this Agreement shall not affect the right of that party at a later time to enforce the provision. No waiver by any party of a breach of any provision in any one or more instances shall be deemed to be an amendment or a continuing waiver of the provision.

22. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

23. **Jurisdiction and Venue.** Any dispute under this Agreement shall be resolved in accordance with the laws of the State of Michigan, including with respect to jurisdiction and venue.

24. **Severability.** If any provision of this Agreement is held to be contrary to law or otherwise unenforceable, in whole or in part, then such provision shall be modified and amended to the extent necessary to be enforceable to the maximum extent permitted by applicable law and if such modification or amendment is not possible, then the offending provision shall be severed from and shall not affect the remaining terms of this Agreement, which shall be interpreted as if the unenforceable provisions were absent from this Agreement.

25. **Title and Headings.** Titles and headings are inserted in this agreement for referenced purposes only and must not be used to interpret the Agreement.

26. **Entire Agreement.** This Agreement contains the entire understanding among the Parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

The Parties hereto have executed this Agreement on the dates set forth below.

Lumberjacks – WC Hockey, LLC

By: _____
Name: Daniel L. Israel
Title: Manager
Date: March __, 2019

City – City of Muskegon

By: _____
Name: Franklin Peterson
Title: City Manager
Date: March __, 2019

By: _____
Name: Ann Meisch
Title: City Clerk
Date: March __, 2019

Exhibit A Shared Space

Lumberjacks Shared Space Areas:

- Lumberjacks locker room
- offices (need to identify offices including Sales Office, GM Office, Existing Coaches Offices, and Finance and Accounting Office (collectively, “Office Space”))
- changing Room next to Assistant Coaches Office. This room is used by the coaching staff to change clothes
- Merchandise Store (should be the name) gift shop area during Lumberjack home games. The City shall permit the placement of temporary kiosk stations
- laundry facilities

Other Occupants Shared Space Areas:

- non-exclusive use of the shower room
- training room, subject to the Lumberjacks priority of usage for educational purposes, viewing game film, team meetings, etc. consistent with its historical use
- weight/workout room and puck shooting training area (RP Hockey to use for a fee that shall be paid to and retained by Lumberjacks at rates set forth in the RP Lease). It is understood that the current location of the shooting area may need to change. The City agrees to cooperate in finding a suitable alternative location should this occur

Exhibit B
Diagram of Shared Space

Exhibit C
Annual Sponsorships

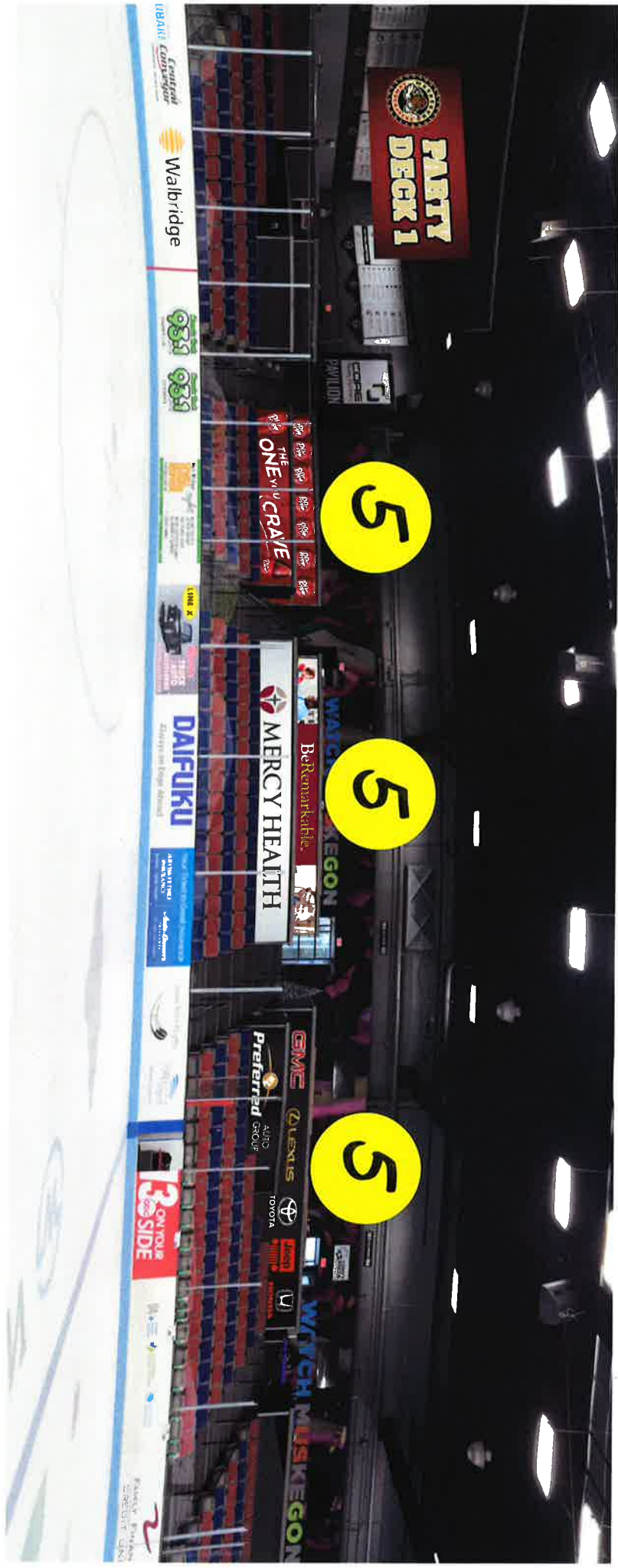
Lumberjacks / City

Annual Sponsorship Projections

	<u>Sponsor Package</u>	<u>Price</u>	<u>Cost</u>	<u>*Net</u>	<u>Jacks (50%)</u>	<u>City (50%)</u>
1	Video Board (Panels)	20K	8K	12K	6K	\$6,000
2	Stage (Fascia)	20K	8K	12K	6K	\$6,000
3	Kids' Zone	25K	8K	17K	8.5K	\$8,500
4	Party Deck 1	25K	8K	17K	8.5K	\$8,500
5	Pavillion (Fascia)	60K	20K	40K	20K	\$20,000
6	Naming Rights	150K	40K	110K	55K	\$55,000
7	Party Deck 2	25K	8K	17K	8.5K	\$8,500
8	Jacks Club (Fascia)	20K	8K	12K	6K	\$6,000
9	Drumline (Fascia)	20K	8K	12K	6K	\$6,000
		365K	116K	249K	124.5K	\$124,500

*Costs include 15% sales commission and Jacks inventory to include Club tickets, Party Decks, Game Program, Group Nights, Player Appearances, Game Promotions, Social Media and Media Promotion, etc.







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HUNT Electric Corporation





CLUB
AT THE
HOTEL

THE
HOTEL

10-10-10

10-10-10

8



BUD LIGHT CLUB

JACKS
\$10

CONCRETE
1-800-257-0111

Holiday Inn
Holiday Inn
Holiday Inn

Benson Drug Company
SAV-MOR

Proudly
Served
Here

Lake-Lake-Lake
HOUSE HOUSE HOUSE

BELLETTIRE

MERCY
HEALTH

Financial Summary of City's Revenue under Shared Use Agreement

1. **Rent/Facility Fee.** During the Term and any Option Term, Lumberjacks shall pay the City the following amounts:

a. Annual Base Rent.

i. Years 1 and 2:	\$125,000
ii. Years 3 thru 7 (2% increase):	\$127,500
iii. Years 8 thru 12 (4% increase):	\$132,600
iv. Years 13 thru 17(4% increase):	\$137,800

b. Ticket Surcharge.

i. Years 1 and 2:	\$1.00 per each ticket sold
ii. Years 3 thru 7:	\$1.25 per each ticket sold
iii. Years 8 thru 12:	\$1.50 per each ticket sold
iv. Years 13 thru 17:	\$1.50 per each ticket sold
v. After Year 17:	\$2.00 per each ticket sold

c. Shared Sponsorships. The City will receive 50% of all net revenue from the 9 sponsorship packages set forth on Exhibit C to the Agreement, PLUS 50% of any and all other sponsorship or promotional opportunities related to the Arena that may arise in the future.

d. Minimum Gross Revenues. The Lumberjacks guaranty that it will pay the City each year a *minimum* of \$225,000 in Gross Revenue (includes Base Rent, Ticket Surcharge, Concessions, Merchandise, Signage any and all other sponsorship or promotional opportunities related to the Arena that may arise in the future.)

2. **Additional Ice Rentals.** If the Lumberjacks host other events other than those already agreed upon to be included within Base Rent requiring ice time (e.g. hockey tournaments, additional camps), the City will be paid \$150 per hour, subject to the 2% increase in the first option term, a 4% increase in the second option term and a 4% increase in the third option term.

3. **WC Hockey Gift of Equipment.** As partial consideration for entering into the Agreement, the Lumberjacks have agreed to assign to the City any and all of its interest in the following assets, the total value at cost of which is approximately \$77,000.

- One (1) EPISTAR Indoor Single-Face Full-Colors video 10mm SMD LED Display, including controller software, Display Cabinets, and 300 Series Sender Box (Big Screen Video Board)
- Electronic devices and cords for Big Screen
- CO2 Cannons
- Additional fitting hoses for tanks, tank manifold
- Portable Broadcast Mixer
- Lighting Project - 10 Vari lite bulbs/installation/repairs
- Conduit, Fittings, wires, breaker and materials to repair lighting fixtures
- Video Board and Ref Review Equipment
- Video Board computer w/3 year warranty
- 4 - Samsung 55" TV for Suites/Club Area
- 5 TV's 32 inch for area (mike is getting information for me)

3. Projections.

	<u>Actual 2017-2018</u>	<u>2019-2020</u>	<u>2021-2022</u>	<u>2023-2024</u>
Rent	\$125,000	\$125,000	\$125,000	\$125,000
Concessions	\$296,000	\$325,000	\$325,000	\$325,000
Merchandise	\$0	\$ 50,000*	\$ 50,000	\$ 50,000
City Surcharge	\$0	\$ 70,000**	\$ 70,000	\$ 70,000
Sponsorship	\$0	\$ 62,000***	\$ 93,000	\$ 124,000
	<u>\$421,000</u>	<u>\$632,000</u>	<u>\$663,000</u>	<u>\$694,000</u>

* This is based on the City receiving 20% of the sale of Lumberjacks merchandise and the City retaining 100% of all other merchandise sales.

** This number does NOT include the surcharges received by the City for Additional Events that the Lumberjacks conduct (10 per year) and the surcharge received by the City for all other ticketed events conducted at the Arena by the City (soccer, football, concerts, etc.)

*** Projected annual revenue for the 9 sponsorship opportunities set forth on Exhibit C of the Agreement will not all be realized in the first year (2019-2020) (e.g. Naming Rights). Therefore, these figures conservatively reflect 50% of potential in the first year, 75% in the second year and 100% in the third year. The goal will be to reach full sponsorship potential as soon as possible.

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: March 6, 2019

RE: Purchase Agreement - 880 First Street, 731 Yuba Street, 205 East Muskegon Ave, 287 East Muskegon Ave, and 225 Eastern Ave

SUMMARY OF REQUEST:

City staff is seeking permission to enter into a new purchase agreement with Core Development, as follows:

1. Acquisition of the structure at 880 First Street for \$150,000
2. Acquisition of the former farmers market site for \$50,000
3. Closing on both parcels must take place on or before June 15, 2019
4. Closing is contingent on buyer's receipt of the following incentives:
 - a. City-approved Commercial Rehabilitation Certificate for 10 years
 - b. State-issued Community Revitalization Program incentive equal to 20% of eligible expenses.
 - c. City-approved Brownfield Reimbursement Plan to reimburse 100% of eligible expenses after City's eligible expenses are fully reimbursed.
 - d. Deployment of at least \$1,850,000 for the development of a food and manufacturing incubation center on the ground floor of the building.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None at this time.

STAFF RECOMMENDATION:

To authorize the clerk and mayor to sign a purchase agreement with the approved terms for city-owned properties located at 880 First Street and 731 Yuba Street.

COMMITTEE RECOMMENDATION:

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners
FROM: Frank Peterson, City Manager
DATE: March 7, 2019
RE: Purchase Agreement and Grant Agreement – West Shoreline Correctional Facility

SUMMARY OF REQUEST:

As part of the City's effort to expand job-creation opportunities, staff is recommending purchase of approximately 60 acres from the State Land Bank. The site formerly housed the West Shoreline Correctional Facility. The funds necessary to satisfy the purchase agreement will be drawn from the Public Improvement Fund. Staff is also seeking approval of a \$4 Million enhancement grant from the State of Michigan prior to closing to offset the purchase costs; these funds will be deposited into the Public Improvement Fund.

FINANCIAL IMPACT:

\$2,160,000.00.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the purchase agreement and grant agreement, and authorize the City Clerk and Mayor to sign.

COMMITTEE RECOMMENDATION:

PURCHASE AGREEMENT FOR REAL PROPERTY

(West Shoreline Correctional Facility)

This Purchase Agreement for Real Property (this “**Agreement**”), is by and between the **State of Michigan** (“**State**”), by its Land Bank Fast Track Authority (the “**Seller**”), a public body corporate and politic, whose address is 105 W. Allegan Street, Lansing, Michigan 48933, and the **City of Muskegon** (the “**Purchaser**”), a Michigan municipal corporation, whose address is 933 Terrace, Muskegon, MI 49440-1397.

Recitals

A. Seller is the owner of certain property commonly known as the West Shoreline Correctional Facility, generally south of the Muskegon and Brooks Correctional Facilities, east of DeBaker Street and north of E. Broadway Avenue, consisting of approximately 61.96 acres as shown and more particularly described in the attached **Exhibit A** (the “**Property**”).

B. The Seller and Purchaser desire to establish the terms, covenants and conditions upon which the Seller will sell and the Purchaser will purchase the Property.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, receipt of which is severally acknowledged, Seller and Purchaser hereby agree as follows:

1. **Transaction.** Seller agrees to sell and Purchaser agrees to purchase the Property upon the terms and conditions set forth in this Agreement (the “**Purchase Transaction**”).

2. **Purchase Price; Earnest Money, Closing.**

a. The price for the Property is **ONE MILLION THREE HUNDRED NINETY-EIGHT THOUSAND THREE HUNDRED TWENTY-THREE AND 50/100 DOLLARS (\$1,398,323.50)**. At Closing, Purchaser shall pay to Seller the sum of One Million Three Hundred Ninety-Eight Thousand Three Hundred Twenty-Three and 50/100 Dollars (\$1,398,323.50) (the “**Purchase Price**”). Purchaser shall not be entitled to any reimbursement from Seller or the Michigan Department of Corrections for demolition costs, environmental assessments, or other costs or expenses related to the Property incurred by Purchaser pre- or post-closing. The Purchase Transaction shall be consummated within the earlier of 120 days after the Effective Date (defined below) or 30 days after the end of the Inspection Period set forth in Section 5 of this Agreement (the “**Closing**”).

b. Upon execution of this Agreement, the Purchaser will deliver immediately an earnest money deposit to the Title Company (defined below) in the amount of **FIFTY THOUSAND (\$50,000) DOLLARS** (the “**Earnest Money**”). The Earnest Money will be credited to the Purchase Price at Closing. Purchaser will not be entitled to any interest earned on the Earnest Money.

c. Upon the waiver or expiration of the Inspection Period described in Section 5, all Earnest Money shall become non-refundable as liquidated damages in the event of default that is

not cured in accordance with Section 15(b) or failure by Purchaser to perform any of its obligations under the terms of this Agreement.

d. The Purchase Price was determined by obtaining an appraisal of the Property for Two Million One Hundred Sixty Thousand and 00/100 Dollars (\$2,160,000.00). The parties then subtracted from the appraised value the Purchaser's share of new fencing of Three Hundred Ninety-Three Thousand Six Hundred Seventy-Six and 50/100 Dollars (\$393,676.50); the cost of demolition estimated at Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00); the estimated cost of the environmental assessment of the Property for Fifteen Thousand and 00/100 Dollars (\$15,000.00); and title insurance and closing costs of Three Thousand and 00/100 Dollars (\$3,000.00) (collectively "Credits"). At Closing, as a condition precedent to Seller's obligation to Close on the Purchase Transaction, Purchaser shall pay to the Michigan Department of Corrections in immediately available funds Three Hundred Ninety-Three Thousand Six Hundred Seventy-Six and 50/100 Dollars (\$393,676.50) for Purchaser's share of the fencing cost. Additionally, post-closing Purchaser shall provide Seller with documentation showing the cost and proof of payment for demolition and environmental assessments on the Property. If Purchaser pays less than the Credits above in the aggregate, then Purchaser shall immediately pay to Seller the difference between its expenditures for these items and the Credits. Such repayment obligation shall survive the Closing.

3. **Effective Date.** This Agreement shall be effective from and after the date of the last signature to this Agreement by Seller or Purchaser (the "**Effective Date**").

4. **Title and Survey.**

a. **Title Insurance; Permitted Exceptions.** The Purchaser may obtain a commitment (the "Commitment") to be issued by Transnation Title Agency in the amount of the Purchase Price (the "**Title Company**"), which agrees to furnish to the Purchaser at or within a reasonable period following the Closing, an ALTA Owner's Policy of Title Insurance (the "**Policy**") for the Property. Seller agrees to provide copies of its organizational documents and such reasonable affidavits, including but not limited to an owner's affidavit (without warranty or indemnification) and a non-foreign affidavit, and other documentation as may be reasonably required by the Title Company to enable it to issue the Policy to the Purchaser without standard exceptions. Purchaser shall pay for the owner's Policy at Closing.

b. **Title Objections.** The Title Company may update the Commitment anytime or from time to time before the date of Closing. Copies of all Commitments shall be provided to Seller along with copies of all supporting documents. If the Commitment identifies exceptions or matters of record affecting the condition of title, the Purchaser shall have the right to specifically object to any or all of them (the "Objections") by written notice to Seller within sixty (60) days after the Effective Date. Seller shall respond to the Purchaser's Objections within ten (10) business days, specifying those Objections that it will cure and those that it is unwilling to cure. Seller shall have up to thirty (30) days from the date first notified of the Purchaser's Objections in which to cure the Objections, either by discharging or otherwise correcting them of record and causing the Title Company to delete them from the Commitment or to cause the Title Company to expressly insure over them, as the case may be. Seller has no obligation or duty to correct or cure any Objections or defects in title. If the Objections cannot be corrected by that date or Seller refuses to do so, the Purchaser may (i) terminate this Agreement and immediately receive a refund of any deposit or advance paid by Purchaser in which event the parties shall have no further

obligation or liabilities hereunder other than those that specifically survive the termination of this Agreement, or (ii) close on the Purchase Transaction in which event the Objections and all other exceptions from the Commitment shall be included as Permitted Exceptions (the "**Permitted Exceptions**") on the Quit Claim Deed at Closing.

c. **Survey.** The Purchaser may obtain an ALTA/ACSM survey of the Property prepared by a registered land surveyor licensed in the State of Michigan which shall be certified to the Seller (the "**Survey**") and may object to any condition of the Property shown on the Survey ("**Survey Objections**") by written notice to Seller within sixty (60) days of the Effective Date. Seller shall respond to the Purchaser's Survey Objections within ten (10) business days, specifying those Survey Objections that it will cure and those that it is unwilling to cure. Seller has no obligation or duty to correct or cure any Survey Objections. If the Survey Objections cannot be corrected by the expiration of the Inspection Period, as defined below, or Seller refuses to do so, the Purchaser may (i) terminate this Agreement and immediately receive a refund of any deposit or advance paid by Purchaser in which event the parties shall have no further obligation or liabilities hereunder other than those that specifically survive the termination of this Agreement, or (ii) close on the Purchase Transaction. The legal description set forth in **Exhibit A** shall be the legal description conveyed on the Quit Claim Deed at Closing.

5. **Inspections and Due Diligence.** From and after the Effective Date Purchaser and/or its agents, at Purchaser's sole cost and expense, with twenty-four (24) hour prior notice to and consent of Seller, which shall not be unreasonably delayed or withheld, upon providing Seller with such proof of insurance as Seller shall reasonably require, including pollution liability coverage provided by Purchaser's environmental consultants, and subject to suitable arrangements being made with the tenants for access to their portions of the Property, shall have 90 days (the "**Inspection Period**"), to enter the Property to take soil borings, perform bearing tests, perform surveying activities, and environmental evaluations, and conduct such other investigations and pursue such other due diligence as the Purchaser deems appropriate. Seller consents and agrees that the Purchaser, and its employees, designees, agents, and contractors, may enter upon the Property for such purposes and subject to the conditions set forth above during the Inspection Period. Seller agrees to furnish to the Purchaser, without cost to the Purchaser, within five (5) business days after the Effective Date, copies of all investigative reports, tests results, surveys, environmental reports, and all other reports, assessments, or findings, in Seller's possession or under Seller's control, pertaining to the Property, including but not limited to the physical condition of the land, as well as any and all matters affecting or which could affect the Purchaser's ownership or use of the Property.

Purchaser hereby releases Seller of any and all liability associated with entry and inspection, and warrants that it will comply with applicable regulations regarding environmental and other matters. Purchaser shall provide Seller with such proof of insurance as Seller shall reasonably require, including pollution liability coverage provided by its environmental consultant. Purchaser shall restore the Property and/or any damage to the Property occasioned by Purchaser's inspection activities.

At any time prior to the expiration of the Inspection Period, Purchaser may provide written notice to the Seller that Purchaser is not satisfied with the condition of the Property and that Purchaser is terminating this Agreement, in which case the parties shall have no further obligation or liabilities hereunder other than those that specifically survive the termination of this

Agreement. If the Agreement is not terminated prior to the expiration of the Inspection Period, then Purchaser shall be deemed to have accepted the condition of the Property and Closing shall occur within thirty (30) days. Additionally, all Earnest Money shall be immediately non-refundable other than due to a default by Seller.

6. **Possession.** Possession of the Property shall be delivered to Purchaser at the Closing free and clear of all tenancies, occupancies and rights of possession.

7. **Proration of Expenses.**

The expenses for the Property will be prorated to the date of Closing, with the date of Closing attributed to Purchaser. All invoices that have been received by Seller will be paid before the date of Closing. Invoices for all services and contracts for the Property covering the time period before Closing and the date of Closing that have not been received by Seller before Closing will be prorated based on good-faith estimates using the invoices for those services and contracts for the immediately prior invoicing period and the prior year's invoicing period for the period of time including the date of Closing. For invoices paid before Closing that cover a period of time after Closing, Seller will receive a credit at Closing for the amount paid for the period of time after Closing. For invoices that will be received after Closing to cover a period of time before Closing, Purchaser will receive a credit at Closing for the amount that will be paid after Closing for the period of time before Closing.

8. **Obligations of Seller Prior to Closing.** During the period commencing on the Effective Date and ending on the date of Closing, Seller shall, in addition to such other duties and obligations set forth in this Agreement:

a. Not enter into any agreement, lease, use or occupancy arrangement, easement, or other agreement with respect to possession or use of the Property without the Purchaser's prior written consent.

b. Not offer or market the Property for sale or lease, or create, grant or accept any agreement for the sale or lease of all or any portion of the Property without the Purchaser's prior written consent.

c. Not create or suffer any right, claim, lien, or encumbrance of any kind whatsoever on all or any portion of the Property.

d. Pay all typical utility bills, insurance premiums and other charges applicable to all or any part of the Property before any penalty for nonpayment shall accrue.

e. Furnish to the Purchaser within ten (10) business days after the Effective Date and thereafter within ten (10) business days after receipt by Seller any and all notices of proposed assessments, and notices of any proposed action under or violation of any law, statute, ordinance, rule or regulation affecting all or any portion of the Property.

f. Pay in full on or before the Closing Date all typical utility charges with respect to the Property and all typical charges for public water and sewer service for the Property with respect to the Property which became due and payable during the twelve (12) months preceding the Closing Date.

g. Maintain and on the Closing Date deliver the Property in substantially the same condition as on the Effective Date.

9. **Casualty Loss or Condemnation.** Seller shall give the Purchaser prompt notice of any material damage to or destruction of all or any part of the Property or of the institution of any proceedings for condemnation thereof.

a. If the Property suffers material damage prior to Closing, then the Purchaser may (i) terminate this Agreement, or (ii) accept the Property in its then condition and proceed with the Closing.

b. If the Property is subject to a material taking by any public authority other than the Purchaser prior to the Closing, then the Purchaser may (i) terminate this Agreement and receive an immediate refund of any deposit or advance paid by Purchaser, or (ii) accept the Property in its then condition, without a reduction in the Purchase Price, and receive an assignment of all of Seller's rights to any condemnation award payable by reason of such taking, including without limitation any payments in respect thereof, theretofore, or thereafter received by Seller. If the Purchaser elects to accept the Property, Seller shall not compromise, settle, or adjust any claims to such award without the Purchaser's prior written consent.

10. **Representations of Seller.** Seller represents to the Purchaser, as of the Effective Date and as of the Closing Date, that:

a. **Corporate Authority.** Seller (i) a public body corporate and politic created by Section 15 of the Land Bank Fast Track Act, MCL 124.765, (ii) has complete and full authority to execute this Agreement and will have at Closing complete and full authority to convey to the Purchaser good and marketable fee simple title to the Property subject to the Permitted Exceptions, (iii) will execute and deliver any reasonable documents, instruments, and agreements including, but not limited to, affidavits and certificates necessary to consummate the transaction contemplated herein, and (iv) will take all additional action that is reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein, as may be reasonably required by the Title Company.

b. **No Lien Rights.** To the best of Seller's knowledge, Seller has not contracted for any services or entered into any other agreements which could bind the Purchaser, as a successor in interest with respect to the Property. No work has been performed or is in process or contemplated and no materials have been or are to be furnished which might provide the basis for construction or other liens against all or any portion of the Property, except for routine maintenance and repair for which Seller will pay in full before Closing. To the best of Seller's knowledge, Seller has not been notified of and has no knowledge pertaining to any possible existing or future improvements that might create an assessment against any part of the Property.

As used herein, "to the best of Seller's knowledge" means the conscious awareness of facts or other information, without any investigation or inquiry of any kind, of any director or staff member of Seller who has actively participated in the process of preparing and negotiating this Agreement. It specifically does not include any information or facts known by the Department of Technology, Management and Budget ("DTMB") not explicitly disclosed to Seller.

c. **Other Property Rights or Interests.** No party is in possession of all or any portion of the Property, whether as a lessee or a tenant at sufferance, nor has any person or entity been granted a license or other right to use all or any part of the Property for any purpose. Seller will not further

sell, encumber, convey, or assign, offer or contract to sell, encumber, convey, assign, pledge, or lease all or any part of the Property or restrict the use of all or any part of the Property or take or cause to be taken any action in conflict with this Agreement at any time after Seller's acceptance hereof. Seller additionally hereby represents that no rights-of-first refusal or similar agreements exist in connection with the Property which would in any way interfere with the Purchaser's ability to purchase the Property as provided herein or which are in any way in contravention of the spirit and intent of this Agreement.

d. No Legal Actions or Impediments. Seller is not a party to or bound by any contract or agreement of any kind or whatsoever, written or verbal, which might affect the Property. Neither the entering into of this Agreement nor the consummation of the transaction contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction, or decree issued against or imposed upon it or contract to which it is a party or will result in a violation by Seller of any applicable law, order, rule, or regulation of any governmental authority. To the best of Seller's knowledge, there is no action, suit, proceeding or investigation pending which would become a cloud on the title to the Property or any portion thereof or which questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality, nor does Seller have any knowledge that any such action, suit, proceeding or investigation is threatened or contemplated.

e. No Violation of Laws; Condemnation. To the best of Seller's knowledge, Seller has not received notice of any violations of law or of any municipal or county ordinances, agency rules or regulations, court orders or decrees, or other legal requirements with respect to the Property or with respect to the use of the property, occupancy or construction thereon. To the best of Seller's knowledge, Seller has not received any notice and has no knowledge of any pending or threatened taking or condemnation of the Property or any portion thereof. To the best of Seller's knowledge, Seller has not received any notice of, any actual or threatened action, litigation, or proceeding by any organization, person, individual or governmental agency (including governmental actions under condemnation authority or proceedings similar thereto) against the Property or Seller, in Seller's capacity as the owner of the Property, nor has any such organization, person, individual or governmental agency communicated to Seller anything which Seller believes to be a threat of any such action, litigation or proceeding.

f. No Violation of Environmental Laws. To the best of Seller's knowledge, at all times while owned by the Michigan Land Bank Fast Track Authority to the date of Closing (i) none of the Property has been or will be excavated or used as a landfill, (ii) no fill has been or will be deposited on or taken from the Property, (iii) no construction debris or other debris (including, without limitation, rocks, stumps, or concrete) has been or will be stored upon or buried upon any of the Property, and (iv) no Hazardous Substances have been or will be generated, manufactured, refined, treated, stored, handled, disposed of, produced, processed, deposited and/or released in, on or about the Property.

For purposes hereof, "Hazardous Substances" means any, hazardous or toxic substances, materials or wastes, pollutants or contaminants defined, listed or regulated by the Environmental Laws or by any other federal, state or local law, regulation or order or by common law decision, and shall include, without limitation, asbestos, polychlorinated biphenyls, radon, urea formaldehyde, petroleum (including gasoline, crude oil and natural or synthetic gas), and related substances.

For purposes hereof, "Environmental Laws" means and includes any federal, state or local law, rule, ordinance, regulation or other legal requirement now or hereinafter in effect relating to land use, air, soil, surface water, groundwater (including the protection, cleanup, removal, remediation or damage thereof, human health and safety or any other environmental matter, including, without limitation, the following laws as the same may be amended from time to time: The National Resources and Environmental Protection Act, MCL §24.101, *et seq.*; Comprehensive Environmental Response. Compensation and Liability Act of 1980, 42 U.S.C. §9602, *et seq.*; Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.*; Clean Water Act, 33 U.S.C. §1251, *et seq.*; Toxic Substances Control Act, 15 U. S. C. §2601, *et seq.*; Refuse Act, 33 U.S.C. §407 and Occupational Safety and Health Act, 29 U.S.C. §651, *et seq.*, Clean Air Act, 42 U.S.C §740 1, *et seq.*

11. **Representations of Purchaser.** Purchaser represents to the Seller, as of the Effective Date and as of the Closing Date, that:

a. Purchaser (i) is a Michigan municipal corporation, (ii) has complete and full authority to execute this Agreement and will have at Closing complete and full authority to consummate the Purchase Transaction, (iii) will execute and deliver any reasonable documents, instruments, and agreements including, but not limited to, affidavits and certificates necessary to consummate the transaction contemplated herein, and (iv) will take all additional action that is reasonably necessary or appropriate to effect and facilitate the consummation of the sale and purchase transaction contemplated herein, as may be reasonably required by the Title Company.

b. This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms. Purchaser's execution and delivery of this Agreement and performance of its obligations hereunder will not violate any agreement to which it is a party or by which it is bound.

c. There is no litigation pending, or to Purchaser's knowledge threatened, to prevent Purchaser from entering into this Agreement and purchasing the Property.

The foregoing representation shall be continuing and shall be true and correct as of the date of Closing.

12. **Conditions Precedent to the Purchaser's Obligation to Close.** The Purchaser's obligation to Close on the Purchase Transaction shall be subject to each of the following conditions precedent:

a. **Purchaser Commission Approvals.** The Muskegon City Commission shall have adopted resolutions authorizing the acquisition of the Property and the performance of the Purchaser's obligations hereunder.

b. **Condition of the Property.** The Property shall be in substantially the same condition on the Closing Date as it is on the Effective Date.

c. **Title.** Title to the Property shall be in the form required by this Agreement such that Title Company shall undertake at the Closing to issue the Policy without standard exceptions, but subject only to the Permitted Exceptions.

d. **Documents and Legal Matters.** All documents required to be delivered to the Purchaser or reasonably requested by the Purchaser shall have been provided to the Purchaser.

e. No Default. Seller shall have performed all of its obligations under this Agreement that were required to be performed prior to the Closing. All of Seller's representations contained herein shall be true and correct as of the Effective Date and as of the Closing Date.

In the event of the failure of any condition precedent described above, Seller shall promptly undertake with diligence a course of conduct reasonably calculated to satisfy the relevant condition within a reasonable period of time. In such event, the Purchaser may, until the condition may be satisfied, (i) defer the Closing Date, and during any such period of delay, the Purchase Price shall not increase; (ii) terminate this Agreement; or (iii) waive noncompliance, proceed to Closing, and Seller shall remove any encumbrances placed on the Property by the act or omission of Seller after the date of this Agreement.

13. Closing.

a. Closing Date and Location. Unless this Agreement shall have been terminated in accordance herewith, the Purchaser and Seller shall close on the Purchase Transaction on such date on or before the time required in Section 2, and at such time and at the offices of the Title Company or such office of the Purchaser, as shall be determined by the Purchaser and set forth in a written notice to Seller at least five (5) business days prior to such date (the “**Closing Date**”). If the Purchaser shall not have provided such notice at least five (5) business days prior to the Closing, Seller may terminate this Agreement by written notice to the Purchaser.

b. Closing Documents. At the Closing, Seller shall deliver to the Purchaser the following documents:

1. Quit Claim Deed to the Property, subject only to the Permitted Exceptions, if any, and specifying that it is exempt from transfer tax pursuant to MCL 207.505(h) and MCL 207.526(h) and otherwise compliant with the following requirements of Public Act No. 578 of Public Acts of 2018 (the “Deed”). The Deed shall further:

- i. Provide that the State shall be paid fifty percent (50%) of the gross revenues generated from the development, if any, of oil, gas, or mineral interest in or under the Property; and
- ii. Reserve to the State all aboriginal antiquities, including mounds, earthworks, forts, burial and village sites, mines, or other relics lying on, within, or under the Property, with power to the State and all others acting under its authority to enter the Property for any purpose related to exploring, excavating and taking away the aboriginal antiquities.
- iii. Provide that if the Property was used by the State as a historical monument, memorial, burial ground, park, or protected wildlife habitat area, it must be maintained and protected for that purpose in perpetuity in accordance with applicable law.
- iv. Provide that if the Property is used for any purpose inconsistent with any restrictions provided in Public Act No. 578 of Public Acts of 2018, the State may reenter and repossess the Property, terminating Purchaser or any successor grantee’s estate in the Property. If Purchaser or any successor grantee disputed the State’s exercise of its right of reentry and fails to promptly deliver possession of the Property to the State, the attorney general, on behalf of the State, may bring an action to quiet title

to, and regain possession of the Property. If the State reenters and repossesses Property under this provision, the State is not liable to reimburse any person for any improvements made on the Property or to compensate any person for any part of an unfulfilled contract or license issued to provide goods or services on or for the Property.

2. Affidavit in the form required by the Title Company (and reasonably acceptable to Seller, but without warranty or indemnification) to remove standard exceptions from the Policy, it being understood that the deletion of standard survey exceptions from the Policy will be based on the Survey.

3. Affidavit certifying that Seller is not a Foreign Person within the meaning of the Internal Revenue Code.

4. Resolutions of the governing body of Seller authorizing the sale of the Property in accordance herewith, including delivery of the Closing Documents, in form and substance acceptable to the Title Company.

5. The execution and delivery of the Quit Claim Deed by the Seller will be deemed to be in full performance and discharge of all the terms and conditions of this Agreement to be observed or performed by Seller, except those that are stated expressly to survive the Closing.

c. Closing Costs. The Quit Claim Deed will be prepared by Seller conveying title as required by this Agreement. All other closing documents will be prepared by the Purchaser or the Title Company. Purchaser and Seller shall share equally the costs of any escrow or closing fees required by the Title Company pertaining to this transaction. Seller shall pay any and all Michigan real estate transfer taxes (both state and county) due in connection with the transfer of the Property to the Purchaser, if any. All recording fees and special assessments, if any, will be paid by Purchaser. Each of the parties shall be responsible for its own legal fees.

d. Closing Statement. At the Closing, the Purchaser and Seller shall each deliver to the other a Closing Statement reflecting the Purchase Price and the applicable credits and allocations of closing costs, in form reasonably satisfactory to the Purchaser and Seller (the "Closing Statement"). On the Closing Statement, the net amount of all adjustments shall be added to or deducted from, as the case may be, the Purchase Price to determine the actual amount of the payment to be disbursed to Seller at the Closing. The portion of the Purchase Price payable at Closing as provided in Section 2, as so adjusted, shall be paid to Seller in immediately available funds.

e. Possession. Seller shall deliver exclusive possession of the Property to the Purchaser on the Closing Date, subject only to the Permitted Exceptions, if any.

14. **Liability and "As Is" Sale**. During the period between the date of this Agreement and the date of Closing, Seller hereby expressly agrees to pay all costs and expenses and discharge all liabilities, obligations and claims arising out of its ownership of the Property.

To the fullest extent possible under law, the Purchaser shall not be liable to Seller for any violation or alleged violation of any Environmental Law occurring or arising out of an occurrence prior to the Closing. However, other than as expressly set forth herein, Seller has made no representation or warranty with respect to the Property. Purchaser shall accept the Property at Closing in its "as is, where is" condition. Seller assumes no liability or responsibility for the presence of any Hazardous Substances on or in the Property, whether for remediation, for cost

recovery, contribution or otherwise. Purchaser acknowledges that Purchaser, having been given the opportunity to inspect the Property, will rely solely on its own investigation of the Property and not on any information provided or to be provided by or on behalf of Seller in order to determine its condition and suitability for Purchaser's intended use. Purchaser further acknowledges that no independent investigation or verification has been or will be made by Seller with respect to any information supplied by or on behalf of Seller concerning the Property; it being intended by the parties that Purchaser shall verify the accuracy and completion of such information itself. Purchaser acknowledges that the disclaimers, agreements and other statements set forth in this paragraph are an integral portion of this Agreement and that Seller would not agree to sell the Property to Purchaser for the Purchase Price without the disclaimers, agreements and other statements in this paragraph

Upon Closing, Purchaser will be deemed to have accepted the Property in "as is condition, with all faults," including the location and extent of boundaries, the condition of all improvements, and the environmental condition of the Property.

15. Remedies Upon Default.

a. Purchaser's Remedies. In the event the Purchaser discovers prior to the Closing that any representation of Seller made herein is materially false or misleading, or in the event Seller fails to substantially keep or perform any covenant, agreement or obligation to be kept or performed by Seller under this Agreement and Seller fails to cure such failure within thirty (30) days after receiving written notice thereof, the Purchaser may terminate this Agreement by written notice to Seller, in which event the Purchaser shall be entitled to an immediate refund of any deposit or advance paid by Purchaser. In the event of such termination, all obligations of the parties hereunder shall be released and held for naught other than those that specifically survive the termination of this Agreement. If the Purchaser shall elect not to terminate, all claims for damages in respect of false or misleading representations discovered or otherwise known by the Purchaser prior to the Closing shall be waived, but the Purchaser shall be entitled to seek specific enforcement of other aspects of this Agreement. In no event shall Seller be liable for incidental, consequential, exemplary or punitive damages. In no event shall Seller's liability for damages exceed the Purchase Price paid and Seller shall be entitled to set off such liability, pro tanto, against the unpaid balance thereof.

b. Seller's Remedy. In the event the Seller discovers prior to the Closing that any representation of Purchaser made herein is materially false or misleading, or if the Purchaser materially breaches any duty or obligation of the Purchaser hereunder, and fails to cure such failure within thirty (30) days after written notice from Seller, then Seller may elect, but shall not be obligated, to terminate this Agreement by written notice to the Purchaser, whereupon neither party hereto shall have any further rights or obligations under this Agreement other than those that specifically survive the termination of this Agreement and any monies paid hereunder may be retained by the Seller as liquidated damages.

16. Notices. Notices shall be in writing and shall be deemed as given and received to or by the Purchaser or Seller, as the case may be, at the addresses set forth below (or to such other notice address as shall be established by written notice provided in accordance with this Section 16): (a) one (1) business day after personal delivery, or (b) three business (3) days after posting if sent by certified mail, postage prepaid, or (c) two (2) business days after receipt by a nationally

recognized overnight delivery service for such overnight delivery to such address. Notices shall be addressed as follows:

If to Seller: State of Michigan
Land Bank Fast Track Authority
105 W. Allegan Street
Lansing, MI 48933
Attn: Josh Burgett, Director

With a copy to: State of Michigan
Land Bank Fast Track Authority
105 W. Allegan Street
Lansing, MI 48933
Attn: General Counsel

If to the Purchaser: City of Muskegon
933 Terrace
Muskegon, MI 49440-1397
Attn: Frank Peterson

With a copy to: Corporation Counsel
City of Muskegon Law Department
601 Terrace Street
Muskegon, MI 49440

17. **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provisions of this Agreement.

18. **Saturdays, Sundays and Holidays.** Whenever in this Agreement it is provided that notice must be given or an act performed or payment made on or by a certain day, if such day falls on a Saturday or a Sunday, or on a federal, state, or local holiday, or on any other day that Purchaser offices are closed to the public (i.e. "holiday closedown"), then the day for the notice of performance or payment shall be the next following business day.

19. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, then the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

20. **Entire Agreement; Integration.** This instrument, including any exhibits which are attached hereto and which are made a part of this Agreement, contains the entire agreement between the parties relating to the sale and purchase of the Property, and all prior negotiations and agreements are merged herein. Seller acknowledges that neither the Purchaser nor the Purchaser's agents have made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by Seller by implication or otherwise unless expressly set forth herein. Purchaser acknowledges that neither the Seller nor the Seller's agents have made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by Purchaser by implication or otherwise unless expressly set forth herein. Any change

in, addition to, or amendment or modification of the terms hereof shall be of no effect unless in a writing executed by both parties and approved as required by this Agreement or applicable law.

21. **Survival.** This Agreement shall not be merged into any instruments or documents executed and delivered at the Closing but shall survive the Closing. All covenants and agreements contained herein shall survive the Closing and remain in full force and effect, including but not limited to the obligations of Purchaser to pay the Purchase Price and to indemnify Seller against loss or liability arising from Purchaser's inspections and activities pursuant to Section 5.

22. **Time is of the Essence.** Time is of the essence of this Agreement and for the performance of all covenants, duties, agreements, and obligations hereunder.

23. **Brokers.** Purchaser and Seller each represent to the other that there has been no involvement of any real estate broker in this Agreement or in the Purchase Transaction.

24. **Binding Effect.** From and after the Effective Date, this Agreement shall bind the parties and their respective successors and permitted assigns. Neither party to this Agreement may assign all or any of its rights or obligations hereunder without the prior written consent of the other party. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies whatsoever. No amendment or modification to this Agreement shall be effective and binding upon the parties unless it is in writing, expressly makes reference to this Agreement, and is signed and acknowledged by duly authorized representatives of both parties.

25. **Counterpart Originals.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all counterparts, when taken together, will constitute one and the same instrument.

26. **Governing Law; Jurisdiction; Venue.** All actions arising under this Agreement shall be governed by, subject to, and construed according to the laws of the State of Michigan.

27. **Assignment.** Neither party to this Agreement may assign all or any of its rights or obligations hereunder without the prior written consent of the other party. Any purported assignment in violation of this section shall be void.

28. **Publicity.** Prior to the Closing, any news or other media releases to the public by either party of information regarding the Purchase Transaction will be provided in advance to the other party with sufficient lead time for comment or coordination, as the case may be.

29. **State Mandated Contract Provisions.**

a. **Zoning, Safety and Regulatory Compliance.** When title passes to the Purchaser at Closing, the Property will immediately become subject to certain State of Michigan safety and regulatory laws and to certain local ordinances and regulations (including zoning and use requirements) to which the Property was not previously subject to because it was owned by the State. Purchaser acknowledges that in certain substantial respects the Property may not comply with such statutes, rules, ordinances and regulations and may have to be substantially altered or repaired to become compliant. Purchaser acknowledges that it will comply with all zoning and

use requirements. The Purchaser acknowledges that the Seller is under no obligation to take any action to bring the Property into compliance with such statutes, and that the Purchaser has had the opportunity to make a personal inspection of the Property. The Purchaser further acknowledges that it is the Purchaser's responsibility to consult with all State and local regulatory agencies, which have and will continue to have, or will obtain jurisdiction.

b. Nondiscrimination. Pursuant to MCL 37.2209 and MCL 37.1209, Purchaser will comply with the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101 et seq.; the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101 et seq.; and all other federal, state and local fair employment practices and equal opportunity laws and covenants that it will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. In addition, as provided in Executive Directive 2019-09, Purchaser shall not discriminate against any employee or applicant for employment with respect to his or her hire, terms, tenure, conditions or privileges of employment, or any matter directly or indirectly related to employment because of religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the individual's ability to perform the duties of a particular job or position. Purchaser agrees to include in every subcontract entered into for the performance of this Agreement this covenant not to discriminate in employment. A breach of this covenant will constitute a material breach of a contract arising out of this Agreement.

c. Unfair Labor Practices. Pursuant to MCL 423.324, the State may void a contract if Purchaser or any of its contractors, subcontractors, manufacturers, or suppliers appear in the register compiled pursuant to 1980 PA 278, MCL 423.321 et seq. A breach of this covenant will constitute a material breach of a contract arising out of this Agreement.

30. **Authority of Purchaser.** In accordance with the City Charter and the Muskegon City Code, and notwithstanding anything in this Agreement or otherwise to the contrary, the Purchaser shall not be authorized or obligated to purchase the Property unless and until this Agreement has been fully executed by the duly authorized representative of the Purchaser, pursuant to a resolution of the Muskegon City Commission as approved by the Mayor of the City of Muskegon, and approved by the City of Muskegon Law Department. Any amendments or modifications to this Agreement must likewise be duly authorized by resolution of the City Commission as approved by the Mayor, and be approved by the Law Department.

[Signatures contained on following page]

IN WITNESS WHEREOF, the parties execute this Agreement on the dates written below and this Agreement shall be effective as of Effective Date.

SELLER:

**STATE OF MICHIGAN LAND BANK FAST
TRACK AUTHORITY**

By: Josh Burgett
Its: Director

Dated: _____

PURCHASER:

CITY OF MUSKEGON, a Michigan municipal
corporation

By: Stephen J. Gowron
Its: Mayor

Dated: _____

By: Ann Marie Meisch
Its: Clerk

Dated: _____

Exhibit A

LEGAL DESCRIPTION

Parcels of land situated in the City of Muskegon, Muskegon County, State of Michigan, and described as follows to-wit:

PARCEL 2: Part of the South 1/2 of Section 35, T10N-R16W, City of Muskegon, Muskegon County, Michigan and more fully described as: Beginning at the South 1/4 corner of Section 35, Town 10 North, Range 16 West, said point also being the Southeast corner of Lot 69 of the recorded plat of "Port City Industrial Center No. 6" as recorded in Liber 22, pages 5-8, Muskegon County records; thence South 89°56'51" West, along the South line of said Lot 69, 633.77 feet to the Southwest Corner of said Lot 69; thence North 00°40'22" East 890.06 feet to the Northwest Corner of said Lot; thence South 89°56'00" East 632.90 feet to the Northwest Corner of Lot 68 of said plat; thence South 00°37'04" West 100.00 feet; thence South 89°56'00" East 1289.87 feet to the East line of Lot 67 of said plat; thence, along the East line of said Lot 67 the following three (3) courses; along a 303.18 foot curve to the right with a radius of 642.00 feet and a chord bearing and distance of South 22°50'42" West 300.37 feet; thence on a 371.00 foot curve to the left with a radius of 303.00 feet and a chord bearing and distance of South 01°33'47" West 348.26 feet; thence South 33°11'07" East 192.07 feet to the Southeast Corner of Lot 67 of said plat; thence South 89°55'56" West, along the South line of Lots 67 and 68 of said plat, 1277.39 feet to the Point of Beginning.

Parcel contains 34.49 acres of land, more or less.

PARCEL 3A: Part of the Northwest ¼ of the Northeast ¼ of Section 2, Town 9 North, Range 16 West, City of Muskegon, Muskegon County, Michigan, described as: beginning at the Northeast corner of the Northwest ¼ of the Northeast ¼ of Section 2; thence South 2 degrees 39 minutes West, 1133.35 feet along the East 1/8th line of said Section 2; thence North 70 degrees 46 minutes West, 1378.4 feet along the Northerly line of land that was conveyed to Consolidated Rail Corporation; thence North 2 degrees 01 minute East, 674.89 feet along the North and South quarter line of said Section 2; thence North 89 degrees 53 minutes East along the North line of said Northwest ¼ of Northeast ¼ to the place of beginning.

Parcel contains 27.47 acres of land, more or less.

SUBJECT TO all agreements, covenants, easements, right-of-ways, reservations and restrictions of record, if any.

**MICHIGAN ECONOMIC DEVELOPMENT CORPORATION
GRANT WITH
CITY OF MUSKEGON**

The Michigan Economic Development Corporation (the "MEDC") enters into a binding agreement (the "Agreement") with City of Muskegon (the "Grantee"). As used in this Agreement, the MEDC and Grantee are sometimes individually referred to as a "Party" and collectively as "Parties."

Grantee: City of Muskegon
Contact: Frank Peterson
933 Terrace Street, Muskegon, Michigan 49440

I. NATURE OF SERVICES. The purpose of this Agreement is to provide funding to the Grantee for the expansion of an industrial park in the city of Muskegon. ("Project") (the Project, together with the Grantee's Duties described in Section V, are collectively referred to as the "Grant Activities"). The Grantee agrees to undertake and perform the Grant Activities.

II. PERFORMANCE SCHEDULE.

Starting Date: January 1, 2019

Ending Date: January 31, 2021

The term of this Agreement shall commence on the Starting Date and shall continue until earlier terminated as permitted by this Agreement ("Term").

III. PAYMENT SCHEDULE INFORMATION.

A. The MEDC agrees to pay the Grantee a sum not to exceed \$4,000,000.00 (the "Grant") as soon as practical after full execution of this Agreement by the Parties. This Agreement does not commit the MEDC to approve requests for additional funds during or beyond the Term. Provided however, if the Grantee is also a recipient of grant funds under one or more of a prior grant agreement authorized by any of PA 268 of 2016, PA 107 of 2017 and/or PA 207 of 2018, Grantee must first certify in writing to the Grant Administer that all such grant funds disbursed thereunder have been expended as required under the applicable prior grant agreement, before any of this Grant may be disbursed to Grantee.

B. MEDC requires that payments under this Agreement be processed by electronic funds transfer (EFT). Grantee is required to register to receive payments by EFT at the State Integrated Governmental Management Applications (SIGMA) Vendor Self Service (VSS) website (www.michigan.gov/VSSLogin).

- IV. **MEDC GRANT ADMINISTRATOR.** The Grantee must communicate with the MEDC representative named below or his or her designee regarding this Agreement. The Grant Administrator may be changed, at any time, at the discretion of the MEDC.

Kristyn Blackmer (the "Grant Administrator")
Michigan Economic Development Corporation
300 North Washington Square
Lansing, Michigan 48913
blackmerk1@michigan.org

- V. **GRANTEE DUTIES.** The Grantee agrees to undertake, perform, and complete the following duties:

- A. All Grant funds paid to the Grantee shall be spent by the Grantee for Grant Activities;
- B. As to any portion of the Project in which in excess of fifty percent (50%) of the Grant funds will be used by Grantee to pay any contractor or other independent third party, Grantee shall engage in a competitive bidding process, including, at a minimum, soliciting quotes from at least two (2) independent sources capable of performing the applicable portion of the Project;
- C. All Grant funds paid to Grantee shall be spent by the Grantee in accordance with the budget, attached as Exhibit A ("Budget"). Other than general administrative expenses necessary to implement the Project, the Budget shall not reflect additional general administrative expenses in excess of ten percent (10%) of the Grant, without the prior written consent of the Grant Administrator. Changes in the Budget will be allowed only upon prior review and written approval by the Grant Administrator; provided however, the Grantee may re-allocate expenditures up to ten percent (10%) within the categories of the Budget upon prior written notice to the Grant Administrator.
- D. Unless this Agreement is terminated prior to the Ending Date as permitted by this Agreement, the Grant Activities shall be completed no later than the Ending Date;
- E. Within fifteen (15) calendar days following the end of each calendar quarter, beginning with the calendar quarter ending 6/30/2019 and continuing through the first to occur of: (i) submission of the Final Progress Report (as defined below) or (ii) the calendar quarter 12/31/2020, the Grantee shall submit a written quarterly progress report to the Grant Administrator reporting (the below, collectively, "Quarterly Progress Report"):
 - i. a summary of the Grant Activities performed over the immediately

- prior calendar quarter;
 - ii. An accounting of Grantee's actual expenditure of all funds on the Project over the immediately prior quarter, including the breakdown of Grantee's actual use of Grant funds on the Project within each applicable category of the Budget, and corresponding copies of supporting documentation of such expenditures, such as receipts, general ledgers, or other evidence of expenditure activity statements;
 - iii. the Grantee's then estimated percentage of completion of the Project; and
 - iv. Any other information deemed relevant by Grantee to support the Grant Activities actually performed.
- F. Upon the first to occur of: (i) Grantee's completion of the Project or (ii) 01/31/2021, the Grantee shall submit a written final progress report to the Grant Administrator reporting (the below, collectively, "Final Progress Report"):
 - i. An accounting of Grantee's actual expenditure of all funds on the Project from the date of the immediately prior Quarterly Progress Report, including the breakdown of Grantee's actual use of Grant funds on the Project within each applicable category of the Budget, and corresponding copies of supporting documentation of such expenditures, such as receipts, general ledgers, or other evidence of expenditure activity statements;
 - ii. A comprehensive narrative of all of the Grant Activities, including a summary about the completed Project and its impact on the community in which the Project is located;
 - iii. the Grantee's then estimated percentage of completion of the Project;
 - iv. One or more photos evidencing the completed Project; and
 - v. Any other information deemed relevant by Grantee to support the Grant Activities actually performed.
- G. Beginning with Grantee's fiscal year in which the Grant is disbursed and within ninety (90) calendar days of the end of Grantee's fiscal year thereafter through the earlier to occur of the Grantee's fiscal year: (i) in which a Final Progress Report has been submitted as required hereunder or (ii) the last year of the Term, the Grantee shall submit a copy of its annual financial statements which financial statements must be audited by an independent certified public accountant.
- H. The Grantee shall submit such other and further information about the Project and documentation of the expenditures of Grant funds as reasonably requested by the MEDC; and
- I. Upon expiration of the Term, or earlier termination as provided by this Agreement, in addition to all other remedies available to the MEDC, any portion of Grant funds paid to Grantee and not expended by the Grantee in

accordance with this Agreement shall be returned by the Grantee to the MEDC.

VI. RELATIONSHIP OF THE PARTIES.

- A.** Neither Grantee nor any of its employees or agents is or shall become an employee of the MEDC due to this Agreement.
- B.** Grantee will perform the Grant Activities free from the direction or control of the MEDC as to means and methods of performance.
- C.** The MEDC is not responsible for any insurance or other fringe benefits, including, but not limited to, Social Security, Worker's Compensation, income tax withholdings, retirement or leave benefits, for Grantee or its employees. Grantee assumes full responsibility for the provision of all such insurance coverage and fringe benefits for its employees.
- D.** All tools, supplies, materials, equipment, and office space necessary to carry out the services described in this Agreement are the sole responsibility of Grantee unless otherwise specified herein.
- E.** Grantee shall retain all control of its employees and staffing decisions independent of the direction and control of the MEDC.

VII. TERMINATION. This Agreement shall terminate upon the earlier of the following:

- A.** The Ending Date;
- B.** Termination by the MEDC, by giving thirty (30) calendar days prior written notice to the Grantee. In the event that the Legislature of the State of Michigan, the State Government, or any State official, commission, authority, body, or employee or the federal government (a) takes any legislative or administrative action which fails to provide, terminates, or reduces the funding necessary for this Agreement; or (b) takes any legislative or administrative action, which is unrelated to the source of funding for the Grant, but which affects the MEDC's ability to fund and administer this Agreement and other MEDC programs, provided, however, that in the event such action results in an immediate absence or termination of funding, cancellation may be made effective immediately upon delivery of notice to the Grantee;
- C.** Termination by the MEDC pursuant to Section XIV of this Agreement; or
- D.** Written agreement of the Parties.

VIII. MEDC EMPLOYEES. The Grantee will not hire any employee of the MEDC to perform any obligations of Grantee covered by this Agreement without prior written approval from the Chief Executive Officer of the MEDC.

IX. CONFLICT OF INTEREST. Except as has been disclosed to the MEDC, Grantee affirms that neither the Grantee, nor any of its officers, directors, employees, or affiliates have, shall have, or shall acquire any contractual, financial, business or other interest, direct or indirect, that would conflict in any manner with Grantee's performance of its obligations under this Agreement or otherwise create the appearance of impropriety with respect to this Agreement.

Grantee further affirms that neither Grantee nor any of its officer, directors, employees, or affiliates have accepted, shall accept, have offered, or shall offer, anything of value to influence the MEDC, its Corporate Board, Executive Committee and their respective directors, participants, officers, agents and employees. Grantee shall not attempt to influence any MEDC employee by the direct or indirect offer of anything of value. Grantee also affirms that neither Grantee, nor its Affiliates or their employees has paid or agreed to pay any person, other than bona fide employees and consultants working solely for Grantee or its affiliate, any fee, commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

In the event of change in either the interests or services under this Agreement, Grantee will inform the MEDC regarding possible conflicts of interest which may arise as a result of such change. Grantee agrees that conflicts of interest shall be resolved to the MEDC's satisfaction or the MEDC may terminate this Agreement. As used in this Paragraph, "conflict of interest" shall include, but not be limited to, conflicts of interest that are defined under the laws of the State of Michigan.

X. INDEMNIFICATION AND GRANTEE LIABILITY INSURANCE. The Grantee shall indemnify, defend and hold harmless the MEDC, its Corporate Board, Executive Committee, and their respective directors, participants, officers, agents and employees from any damages that it may sustain by any acts or omissions pertaining to the Grant Activities. The Grantee shall maintain such insurance to protect the Indemnified Persons from claims that might arise out of, or as a result of, the Grant Activities and Grantee's operations; however, Grantee's indemnification obligations under this Agreement shall not be limited to the limits of liability imposed under the Grantee's insurance policies. The Grantee will provide and maintain its own general liability, property damage, and workers compensation insurance.

XI. ASSIGNMENT/TRANSFER/SUBCONTRACTING. The Grantee shall not assign, transfer, convey, subcontract, or otherwise dispose any interest of the Grantee under this Agreement without the prior written consent of the MEDC.

XII. COMPLIANCE WITH LAWS. The Grantee is not, and will not during the Term, be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or

other requirements imposed by any governmental authority to which it is subject, and will not fail to obtain any licenses, permits or other governmental authorizations necessary to carry out its duties under this Agreement.

- XIII. DEFAULT.** The occurrence of any one or more of the following events or conditions shall constitute an “Event of Default” under this Agreement, unless a written waiver of the Event of Default is signed by the MEDC: (a) any representation, covenant, certification or warranty made by the Grantee shall prove incorrect at the time that such representation, covenant, certification or warranty was made in any material respect; or (b) the Grantee’s failure to comply with any of its obligations or duties under this Agreement, including the Grantee’s Duties.
- XIV. AVAILABLE REMEDIES.** Upon the occurrence of any one or more of the Events of Default: (a) the MEDC may suspend any MEDC obligation to make any payments under this Agreement, and (b) in the sole discretion and at the option of the MEDC, the MEDC may terminate this Agreement immediately upon notice to the Grantee. The termination of this Agreement is not intended to be the sole and exclusive remedy in case any Event of Default shall occur and each remedy, including seeking damages for breach of this Agreement, shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law or equity.
- XV. ACCESS TO RECORDS AND INSPECTION RIGHTS.** During the Term and for a period of three (3) years following the end of the Term, the Grantee shall retain reasonable records related to the Grant Activities, including records evidencing that the Grant Activities were actually performed and the identity of all persons and entities that are paid any portion of the Grant funds. There will be frequent contact between the Grant Administrator and the Grantee. To monitor and ensure compliance with the terms of this Agreement, the Grantee shall permit the MEDC and/or the Auditor General of the State of Michigan (“Auditor General”) to visit the Grantee, the Project location, and any other location where books and records of the Grantee are normally kept, to inspect the Project, the books and records, including financial records and all other information and data relevant to the terms of this Agreement, including the expenditure of the Grant disbursements; provided, however, that such inspection and audit rights shall survive the end of the Term by three (3) years. At such visits, the Grantee shall permit any employee or agent of the MEDC and/or the Auditor General to make copies or extracts from information and to discuss the Project, the affairs, finances, and accounts of the Grantee related to this Agreement with its officers, employees, or agents. The MEDC and/or the Auditor General shall have the right to remove, photocopy, photograph, or otherwise record in any way any part of such books and records with the prior written consent of the Grantee, which consent shall not be unreasonably withheld.
- XVI. GOVERNING LAW.** This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced, and governed under the laws of the State of Michigan without regard to the doctrines of conflict of laws.

- XVII. NOTICES.** Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and e-mailed, or faxed, or mailed by first class, postage prepaid, or sent by express, overnight courier to the respective Party at the e-mail, fax or physical addresses as last known or otherwise reasonably identified by the notifying Party. The MEDC and Grantee may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.
- XVIII. TOTAL AGREEMENT.** This Agreement, including Exhibit A, is the entire agreement between the Parties as to the subject matter of this Agreement.
- XIX. SURVIVAL.** The terms and conditions of sections VI, X, XV, XVI, XVII, XVIII and XIX shall survive the expiration, or earlier termination, of the Term.
- XX. COUNTERPARTS AND COPIES.** This Agreement may be signed in one or more counterparts, and such signatures may be electronically delivered, and in such circumstances, shall be considered one document and an original for all purposes.

(SIGNATURE PAGE FOLLOWS)

The signatories below warrant that they are empowered to enter into this Agreement.

GRANTEE ACCEPTANCE:

City of Muskegon

Dated: _____

By: Frank Peterson
Its: City Manager

MEDC ACCEPTANCE:

Michigan Economic Development Corporation

Dated: _____

By: Linda Asciutto
Its: General Counsel

EXHIBIT A

GRANTEE'S BUDGET

1. Grantee: City of Muskegon			2. Project Title: Industrial Park Expansion		
3. Project Cost Elements		4. Funding Sources			
Activities	Other/Additional Notes	Special Legislative Grant	Local Funding	Other Funding	Total
Other:	Acquisition	\$ 1,398,676.50	\$ -		\$ 1,398,676.50
Water & Sewer Infrastructure		\$ -	\$ 5,700,280.00		\$ 5,700,280.00
Road Infrastructure		\$ 1,500,000.00	\$ -		\$ 1,500,000.00
Consultants/Outside Contractors	Demolition	\$ 901,323.50	\$ 518,676.50		\$ 1,420,000.00
General Admin Costs Necessasry to Impliment the Project (staff costs, etc.):	Staff Costs	\$ 200,000.00	\$ -		\$ 200,000.00
Total		\$ 4,000,000.00	\$ 6,218,956.50	\$ -	\$ 10,218,956.50