

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 24, 2017

CITY COMMISSION CHAMBERS @ 5:30 P.M.

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS AND AWARDS:**
- ☐ **INTRODUCTIONS/PRESENTATION:**
 - A. Mike Overly - MERS**
- ☐ **CITY MANAGER'S REPORT:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes City Clerk**
 - B. Food Truck Registration Fees City Clerk**
 - C. MEDC Grant for Kitchen 242 Assistant Finance Director and City Clerk**
 - D. Western Market Lease Agreement City Clerk**
 - E. Everstream GLC Holding Company LLC – METRO Act Permit Engineering**
 - F. Professional Service Agreement (SAFEbuilt) Public Safety**
 - G. SEIU Collective Bargaining Agreement City Manager**
 - H. POLC Collective Bargaining Agreement City Manager**
 - I. Defined Benefit Plan Adoption Agreement – Div 12 (DPW) Finance**
 - J. Corrections to 2017 Fee Schedule Department Comments Finance**
- ☐ **PUBLIC HEARINGS:**
 - A. Public Hearing – Establishment of a Commercial Redevelopment District – 878 Jefferson St., Suite 1 Planning & Economic Development**
 - B. Public Hearing – Issuance of a Commercial Facilities Exemption Certificate – 878 Jefferson St., Suite 1 Planning & Economic Development**

C. Public Hearing – Establishment of a Commercial Redevelopment District – 275 W. Clay Avenue Planning & Economic Development

D. Public Hearing – Issuance of a Commercial Facilities Exemption Certificate – 275 W. Clay Avenue Planning & Economic Development

E. Public Hearing – Request to Create a New Neighborhood Enterprise Zone District at 275 W. Clay Ave. Planning & Economic Development

☐ **COMMUNICATIONS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

A. Community Relations Committee Recommendations for Various City Boards and Committees City Clerk

☐ **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- TO REQUEST A REPRESENTATIVE TO DIAL (231) 724-6705.

Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: January 19, 2017

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

1. We are starting with a short presentation from Mike Overly from MERS. Mike will be here to discuss the proposed changes to the SEIU Contract as it related to pension benefits. Later in the consent agenda, we will be adopting a DEFINED BENEFIT PLAN AGREEMENT that reduces the pension multiplier for that group. Subsequent agreements will be before the commission at the February meeting for the POLC and Non-Represented divisions. A copy of the presentation is included in your packet.
2. Under the consent agenda, we are asking the Commission to for approval of the following:
 - a. Last meeting's minutes.
 - b. A change to food truck registration fees to allow for a reduced fee for the vendors that participate in the Taste of Muskegon Event. We have not had much participation in the food truck program, and expect that this will help, as all Taste of Muskegon participants will now be required to register (at the lower fee).
 - c. Approval of a grant award from the MEDC in the amount of \$200,000 in support of Kitchen 242. There is a list of accepted expenditures for the grant – most of which is equipment for the kitchen.
 - d. Approval of an application and agreement to be used for the new "Western Market." These are the pop up shops on Western Avenue. We will have three sizes for vendors to choose from. The rental fees will help cover the costs of marketing and managing the site, as well as providing utilities to the spaces.
 - e. Approval of a METRO Act Permit for Everstream GLC Holding Company, LLC.
 - f. Final approval of the SAFEbuilt contract, as previously presented at the December Commission Work Session. We have come to an agreement on all outstanding items and staff is recommending approval.
 - g. Approval of the SEIU Collective Bargaining Agreement. There are a number of changes, as outlined in the tentative agreement that is attached. The most

significant is the reduced pension multiplier. As per the attached MERS report, this move will reduce pension cost significantly over the long-term and greatly improve our funding level from 88.2% to 95.1%. Over the term of the agreement, the average pay raise is about 3.4%. Normally, we would have pushed for an amount between 2% and 2.5%, but negotiated a higher increase in exchange for the long-term pension savings.

- h. Approval of the POLC Collective Bargaining Agreement. As with the SEIU agreement, we have negotiated a significant pension benefit reduction. The final calculations are pending from MERS, but initial reports indicate that the change will reduce our annual costs by more than \$300,000 and improve our funding level from 90.9% to more than 105.0%. As with the SEIU contract, we are proposing larger average wage increases over the 5 year term (2.9%) in exchange for the pension reduction. Additional proposed changes include the addition of Martin Luther King Jr.'s Birthday as a celebrated holiday, increases to the defined contribution plan (for non-pensioners), changes to the part-time officer allowed duties, changes to vacation selection process, changes to compensation for field training officers, and changes to sick time requirements. Overall, this is a great contract that flowed from a great process, and we are excited to see it implemented, as we expect it will help with recruitment and retention of officers.
 - i. Approval of the Defined Benefit Plan Agreement with MERS related to the SEIU benefit change. As discussed above, this will authorize the change from a 2.25 to a 2.0 multiplier. The new agreements for POLC and Non-Represented will follow at the first meeting in February.
 - j. Approval of corrections to the notes included in the 2017 Fee Schedule. WE need to clarify that there is no re-inspection included in the rental registration fee.
3. Under Public Hearings:
- a. We will consider establishing a commercial rehab district for 878 Jefferson to accommodate about \$100,000 in upgrades.
 - b. We will issue the certificate related to the rehab at 878 Jefferson
 - c. We will consider establishing a commercial rehab district for 275 West Clay for the commercial component of the Berkshire development
 - d. We will issue the certificate for the commercial rehab at 275 West Clay.
 - e. We will create a Neighborhood Enterprise Zone for the market-rate portion of the Berkshire development at 275 West Clay.
4. Under new business, we will be asking the Commission to approve the following:
- a. Approval of CRC Recommendations for various city boards.

Date: January 17, 2017
To: Honorable Mayor and City Commissioners
From: Ann Marie Meisch, City Clerk
RE: Approval of Minutes

SUMMARY OF REQUEST: To approve minutes of the January 9, 2017 Worksession Meeting and the January 10, 2017 Regular City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, January 9, 2017
City Commission Chambers
933 Terrace Street, Muskegon, MI 49440
5:30 PM

MINUTES

2017-01

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

Absent: None

Tree Grant from Consumer's Energy

A representative from Consumer's Energy presented the City with a \$2500 check for the replacement of trees.

Red Project

Stephen Alsum, Executive Director of the Grand Rapids Red Project, presented information to the City Commission regarding the Red Project. The item is to be added to the consent agenda for the Regular City Commission meeting on January 10, 2017.

Brownfield Plan Amendment – Watermark

Cathy Brubaker-Clarke, Planning & Economic Development Director, presented the request that will be considered at the regular meeting of the City Commission on January 10, 2017. City Commissioners questions were answered by staff.

Amendment to the Zoning Ordinance – Waterfront Industrial Planned Unit Development (WI-PUD)

Brownfield Amendment to the Zoning Ordinance – there was discussion about the change to the zoning ordinance

Highpoint Flats Update

Discussion of this project is happening on a regular basis and a meeting with the city attorney for an update will take place.

Adjournment

Moved by German, second by Rinsema-Sybenga, to adjourn the meeting at 7:35 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

CITY OF MUSKEGON

CITY COMMISSION MEETING

JANUARY 10, 2017

CITY COMMISSION CHAMBERS @ 5:30 P.M.

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, January 10, 2017. Pastor Matt Sharpe, Evanston Avenue Baptist 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 Hood, Commissioners Ken Johnson, Debra Warren, Willie German, Jr., Dan Rinsema-Sybenga, and Byron Turnquist, City Manager Franklin Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

2017-02 CONSENT AGENDA:

A. Approval of Minutes City Clerk

SUMMARY OF REQUEST: To approve minutes of the December 12, 2016 Worksession Meeting and the December 13, 2016 Regular City Commission Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

B. Gaming License Request from Harbor Hospice Foundation City Clerk

SUMMARY OF REQUEST: The Muskegon Harbor Hospice Foundation is requesting a resolution recognizing them as a non-profit organization operating in the City for the purpose of obtaining a Gaming License.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

C. Gaming License Request from Flyin' Heroes City Clerk

SUMMARY OF REQUEST: The Flyin' Heroes is requesting a resolution recognizing them as a non-profit organization operating in the City for the purpose of obtaining a Gaming License.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

D. Special Event Liquor License – Farmers Market City Clerk

SUMMARY OF REQUEST: The Muskegon Farmers Market will be hosting a Dining in the Dark event on Thursday, February 16th at the Farmers Market and we are requesting a liquor license including spirits. Proceeds will benefit the Farmers Market.

FINANCIAL IMPACT: \$50 permit from the State for every date requested and \$75 bond.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the request.

E. MDOT Performance Resolution Department of Public Works

SUMMARY OF REQUEST: Adopt the MDOT Performance Resolution authorizing the director of public works and/or administrative supervisor to sign off on permits to perform work on state highways within the city. The form has been updated and previous resolution is no longer valid

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve and adopt the Performance Resolution by authorizing the City Clerk to sign.

F. Agreement for Engineering Services with Charles Wiggins Engineering

SUMMARY OF REQUEST: Authorize staff to enter into an employment agreement with Charles Wiggins to provide assistance to the engineering department in the capacity of a Civil Engineer I.

As you may recall, Mr. Wiggins worked for the City for over 27 years and since retiring in August of 2015 he had been employed by Elwood Services to provide engineering services to the City.

Furthermore, it is respectfully requested that staff be authorized to retro this agreement to the beginning of this year (2017) and the ability to extend and/or terminate said agreement to best serve the City.

FINANCIAL IMPACT: Approximately \$60,000 based on estimated 1700 hours

of work.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Authorize staff to enter into an agreement with Mr. Wiggins.

G. Amendment to the Zoning Ordinance – Waterfront Industrial Planned Unit Development (WI-PUD) Planning & Economic Development

REMOVED PER STAFF REQUEST

H. Termination of “The Watermark” Project Brownfield Redevelopment Authority Plan (May, 25, 2004) Planning & Economic Development

SUMMARY OF REQUEST: The Brownfield Plan Amendment for “The Watermark” Project (“Plan”) was approved by the Brownfield Redevelopment Authority (BRA) and the City Commission in May 2004. The redevelopment projects outlined in the Plan have been completed (54 residential units). There was no TIF capture included in this Plan. As a new Brownfield Plan Amendment is being requested by the owners of the property, it is necessary to terminate the existing Plan which has been completed, using the language recommended in the “Staff Recommendation”.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: That the City Commission hereby terminates “The Watermark” Project Brownfield Plan adopted on May 25, 2004. The Plan is being terminated pursuant to MCL 125.2666(8)(a) as it relates to the eligible property located at 930 Washington Avenue and pursuant to MCL 125.2666(8)(b) as it relates to the eligible property located at 920 Washington Avenue, 965 West Western Avenue and 1330 Division Street.

COMMITTEE RECOMMENDATION: The Brownfield Redevelopment Authority approved termination of the Brownfield Plan Amendment for “The Watermark” Project (May 25, 2004) at their December 6, 2016 meeting.

I. Adopt a Resolution to Approve the Operation of the Red Project in the City of Muskegon City Manager

SUMMARY OF REQUEST: Adopt a resolution to approve the operation of the Red Project in the City of Muskegon.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt the resolution.

Motion by Vice Mayor Hood, second by Commissioner German, to approve the consent agenda as presented.

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

Nays: None

MOTION PASSES

2017-03 PUBLIC HEARINGS:

A. Public Hearing for Brownfield Plan Amendment and Development and Reimbursement Agreement for P&G Holdings NY, LLC Redevelopment Project (Watermark) Planning & Economic Development

SUMMARY OF REQUEST: To hold a public hearing and approve the resolution approving and adopting the amendment to the Brownfield Plan and to approve the Development and Reimbursement Agreement. The amendments are for property owned by P&G Holdings NY, LLC.

FINANCIAL IMPACT: Brownfield Tax Increment Financing will be used to reimburse the developer for “eligible expenses” incurred in association with development of the Watermark project. P&G Holdings NY, LLC cost for the development of the property is approximately \$30 million in private investment, resulting in a substantial increase in the local and school taxes generated by the property.

“Eligible Expenses” would be reimbursed starting in 2018. The estimated tax capture and payment schedule is included as Attachment U-3 in the proposed Brownfield Plan Amendment.

After all eligible cost incurred by the various parties are reimbursed (estimated to be in 2047), the BRA is authorized to continue to capture local taxes for five more years for deposit into a Local Site Remediation Revolving Fund.

The Development and Reimbursement Agreement provides the structure for the capture of taxes and the reimbursement to P&G Holdings and the City of Muskegon for eligible expenses.

STAFF RECOMMENDATION: To hold a public hearing for approval of the Brownfield Plan Amendment for the P&G Holdings NY, LLC Redevelopment Project and approve the resolution and authorize the Mayor and Clerk to sign the resolution, and to approve the Development and Reimbursement Agreement between P&G Holdings NY, LLC, the City of Muskegon, and the City of Muskegon Brownfield Redevelopment Authority.

COMMITTEE RECOMMENDATION: The Muskegon City Commission set the public hearing for January 10, 2017 at their December 13, 2016 meeting. Since that time, a notice of the public hearing has been sent to taxing jurisdictions. In addition, the Brownfield Redevelopment Authority approved the Plan amendment and the Development and Reimbursement Agreement on December 6, 2016 and recommends that the Muskegon City Commission

approve the Plan amendment and Development and Reimbursement Agreement.

PUBLIC HEARING COMMENCED:

Comments were received by the public as follows:

Lawrence Spataro	1567 Sixth Street	In Favor
Pat Camp	930 Washington	Against
Jen Sanocki	1417 Lakeshore Drive	Against
Pete Amrine	1431 Glen	Would like to see it fixed
Donna Pennington	1418 Lakeshore Drive	Against
Lea Markowski	1055 Horton	Wants to see it

Motion by Commissioner Rinsema-Sybenga, second by Vice Mayor Hood to close the public hearing and approve the resolution and authorize the Mayor and Clerk to sign the resolution, and to approve the Development and Reimbursement Agreement between P& G Holdings NY, LLC, the City of Muskegon and the City of Muskegon Brownfield Redevelopment Authority.

Motion by Commissioner Johnson, second by Commissioner Warren, to table the item until the February 14, 2017 Regular Commission Meeting.

ROLL VOTE: Ayes: Turnquist and Johnson

Nays: Gawron, Hood, Warren, German, and Rinsema-Sybenga

MOTION FAILS

~ VOTE ON ORIGINAL MOTION ~

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

Nays: Johnson

MOTION PASSES

2017-04 NEW BUSINESS:

A. Approval of a Neighborhood Enterprise Zone Certificate – 920 Washington Avenue & 965 W. Western Avenue Planning & Economic Development

SUMMARY OF REQUEST: An application for a Neighborhood Enterprise Zone Certificate has been received from P&G Holdings NY, LLC for the conversion of vacant industrial space to apartments at 920 Washington Avenue and 965 West Western Avenue. The estimated project cost is \$9,417,175 and will include 126 market rate apartments. The property was approved as a Neighborhood Enterprise Zone District on September 13, 2016. 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: The taxes on the apartment portion of the project will be frozen at the pre-rehabilitated rate for 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.

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Warren, to approve the NEZ certificate for 920 Washington Avenue and 965 W. Western Avenue.

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

Nays: Johnson

MOTION PASSES

B. Approval of a Neighborhood Enterprise Zone Certificate – 285 W. Western Avenue Planning & Economic Development

REMOVED PER STAFF REQUEST

C. Concurrence with the Housing Board of Appeals Notice and Order to Demolish Public Safety

1456 Park Street

1290 Wood Street

768 Marcoux

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

FINANCIAL IMPACT: General Funds

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the Housing Board of Appeals decision to demolish.

Motion by Commissioner German, second by Vice Mayor Hood, to concur with

the Housing Board of Appeals decision to demolish 1456 Park Street and 768 Marcoux.

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

Nays: None

MOTION PASSES

Motion by Commissioner Rinsema-Sybenga, second by Commissioner Johnson, to concur with the Housing Board of Appeals decision to demolish 1290 Wood Street.

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

Nays: None

MOTION PASSES

PUBLIC PARTICIPATION: Public comments were received.

ADJOURNMENT: The City Commission Meeting adjourned at 7:00 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC, City Clerk

Date: January 24, 2017
To: Honorable Mayor and City Commissioners
From: Ann Meisch, City Clerk
RE: Food Truck Registration Fees

SUMMARY OF REQUEST: This is a request to adjust the mobile food vending fee to \$50 for those food truck vendors who will participate in Taste of Muskegon. Taste of Muskegon has contacted staff with the suggestion and would make it a requirement that their participants register. Currently food vendors participating in a special event are not required to register.

This registration will be good through April 30th of the following year. Currently mobile food vendors outside the City limits are required to pay \$300 annually, those having restaurants in the City of Muskegon have a fee of \$150, and those with a brick and mortar business in the downtown development district pay \$50 annually.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval.

Date: January 17, 2017
To: Honorable Mayor and City Commissioners
From: Assistant Finance Director and City Clerk 
RE: MEDC Grant for Kitchen 242

SUMMARY OF REQUEST: To approve the attached grant agreement with MEDC for \$200,000 for Kitchen 242. This grant allows for important upgrades at the Kitchen including ventilation improvements, technology upgrades including demonstration mirrors, security cages and locks for kitchen users to store their products and many new and additional appliances. Also included in this grant is money for Marketing and tables and chairs for events at the Kitchen/Market.

FINANCIAL IMPACT:

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the grant agreement with MEDC for Kitchen 242 and authorize staff to sign the grant agreement.

COMMITTEE RECOMMENATION:

**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
933 Terrace Street
Muskegon, Michigan 49440

I. **NATURE OF SERVICES.** The purpose of this Agreement is to provide funding to the Grantee for technology upgrades, the purchase of equipment, and professional services described in Exhibit B. (the "Grant Activities").

II. **PERFORMANCE SCHEDULE.**

Starting Date: October 1, 2016

Ending Date: September 30, 2017

The term of this Agreement (the "Term") shall commence on the Starting Date and shall continue until the occurrence of an event described in Section IX of this Agreement.

III. **INCORPORATION BY REFERENCE.** The following documents are incorporated by reference as binding obligations, term and conditions of the Agreement.

Exhibit A: Grantee's Budget

Exhibit B: Grantee's Proposal

In the event of any inconsistency between the provisions of Exhibits A, B and this Agreement, the provisions of this Agreement shall control.

IV. **PAYMENT SCHEDULE INFORMATION.**

A. The MEDC agrees to pay the Grantee a sum not to exceed \$200,000 (the "Grant").

B. A disbursement of 50% of the funds under this Agreement shall be made by the MEDC within 30 business days of grant execution. Additional funds shall only be disbursed after verification that the previous payment has been expended, in full, in accordance with this Agreement. The remaining payments under this Agreement shall be made by the MEDC to Grantee upon

receipt and approval by the Grant Administrator of Grantee's billing statement(s). Grantee shall provide Grantee's billing statement(s) to Grant Administrator or at Grant Administrator's direction on a monthly basis, as needed. Grant Administrator shall provide Grantee with appropriate submission instructions of Grantee's billing statement(s).

- C. The Grantee agrees that all funds shown in the Budget, described in Exhibit A, are to be spent as specified. This Agreement does not commit the MEDC to approve requests for additional funds during or beyond this Grant period.
- D. Changes in the Budget will be allowed only upon prior review and written approval by the Grant Administrator.
- E. Grantee's billing statement(s) may be subject to a final audit prior to the release of final payment.

- V. **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.

Rob Garza (the "Grant Administrator")
Michigan Economic Development Corporation
300 North Washington Square
Lansing, Michigan 48913
garzar8@michigan.org

VI. **GRANTEE DUTIES.**

- 1. The Grantee agrees to undertake, perform, and complete the services fully described in Exhibit B.
- 2. The Grantee agrees to submit documentation of the expenditures of funds and submit a progress report to the satisfaction of the MEDC.

VII. **RELATIONSHIP OF THE PARTIES.**

- A. Due to the nature of the services described herein and the need for specialized skill and knowledge of Grantee, the MEDC is entering into this Agreement with Grantee. As a result, 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 provide the services and achieve the results specified in this Agreement 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.
- VIII. **ACCESS TO RECORDS.** During the Term, and for Seven years after the Ending Date, the Grantee shall maintain reasonable records, including evidence that the services actually were performed and the identity of all individuals paid for such services, and shall allow access to those records by the MEDC or their authorized representative at any time during this period.
- IX. **TERMINATION.** This Agreement shall terminate upon the earlier of the following:
- A. The Ending Date.
 - B. Termination by the MEDC, by giving thirty calendar days prior written notice to the Grantee. In the event that the Legislature of the State of Michigan (the "State"), 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 XIX of this Agreement.
- X. **MEDC EMPLOYEES.** The Grantee will not hire any employee of the MEDC to perform any services covered by this agreement without prior written approval from the Chief Executive Officer of the MEDC.
- XI. **CONFIDENTIAL INFORMATION.** Except as required by law, the Grantee shall not disclose any information, including targeted business lists, economic development analyses, computer programs, databases and all materials furnished to the Grantee by the MEDC without the prior written consent of the MEDC. All information described in this Section shall be considered "Confidential Information" under this

Agreement. Confidential Information does not include: (a) information that is already in the possession of, or is independently developed by, Grantee; (b) becomes publicly available other than through breach of this Agreement; (c) is received by Grantee from a third party with authorization to make such disclosures; or (d) is released with MEDC's written consent.

XII. PUBLICATIONS. Except for Confidential Information, the MEDC hereby agrees that researchers funded with the Grant shall be permitted to present at symposia, national, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, the methods and results of their research. Grantee shall at its sole discretion and at its sole cost and expense, prior to publication, seek intellectual property protection for any Inventions (as described in Section XIII) if commercially warranted. Grantee shall submit to the MEDC a listing of articles that Grantee has submitted for publication resulting from work performed hereunder in its quarterly report to the MEDC. Grantee shall acknowledge the financial support received from the MEDC, as appropriate, in any such publication.

XIII. INTELLECTUAL PROPERTY RIGHTS. Grantee shall retain ownership to the entire right, title, and interest in any new inventions, improvements, or discoveries developed or produced under this Grant, including, but not limited to, concepts know-how, software, materials, methods, and devices ("Inventions") and shall have the right to enter into license agreements with industry covering Inventions.

XIV. CONFLICT OF INTEREST. Except as has been disclosed to the MEDC, Grantee affirms that neither the Grantee, nor its Affiliates or their employees has, 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 affiliates or their employees has accepted or shall accept anything of value based on an understanding that the actions of the Grantee or its affiliates or either's employees on behalf of the MEDC would be influenced. 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.

- XV. INDEMNIFICATION AND GRANTEE LIABILITY INSURANCE.** The Grantee shall indemnify, defend and hold harmless the MEDC, its corporate board of directors, executive committee members including its participants, its corporate board of directors, its officers, agents, and employees (the "Indemnified Persons") from any damages that it may sustain through the negligence of the Grantee pertaining to the performance of this Agreement.

The Grantee shall maintain such insurance to protect the Indemnified Persons from claims that might arise out of or as a result of the Grantee's operations; however, Grantee's indemnification obligation 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. The insurance shall be written for not less than any limits of liability required by law for the Grantee's obligation for indemnification under this Agreement.

- XVI. TOTAL AGREEMENT.** This Agreement, including the exhibits incorporated herein, is the entire agreement between the Parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this Agreement shall be binding. This Agreement may not be changed except by mutual agreement of the Parties reduced to writing and signed.

- XVII. ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Except as contemplated by this Agreement, the Grantee shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this Agreement without the prior specific written consent of the MEDC. Any future successors of the Grantee will be bound by the provisions of this Agreement unless the MEDC otherwise agrees in a specific written consent. The MEDC reserves the right to approve subcontractors for this Agreement and to require the Grantee to replace subcontractors who are found to be unacceptable.

- XVIII. 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.

- XIX. 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; (b) the Grantee's failure generally to pay debts as they mature, or the

appointment of a receiver or custodian over a material portion of the Grantee's assets, which receiver or custodian is not discharged within Sixty calendar days of such appointment; (c) any voluntary bankruptcy or insolvency proceedings are commenced by the Grantee; (d) any involuntary bankruptcy or insolvency proceedings are commenced against the Grantee, which proceedings are not set aside within Sixty calendar days from the date of institution thereof; (e) any writ of attachment, garnishment, execution, tax lien, or similar writ is issued against any property of the Grantee, which is not removed within Sixty calendar days. (f) the Grantee's failure to comply with the reporting requirements hereof; (g) the Grantee's failure to comply with any obligations or duties contained herein; (h) Grantee's use of the Grant funds for any purpose not contemplated under this Agreement.

XX. AVAILABLE REMEDIES. Upon the occurrence of any one or more of the Events of Default, 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 shall be cumulative and in addition to every other provision or remedy given herein or now or hereafter existing at law or equity.

XXI. REIMBURSEMENT. If this Grant is terminated as a result of Section XIX(h) hereof, the MEDC shall have no further obligation to make a Grant disbursement to the Grantee. The Grantee shall reimburse the MEDC for disbursements of the Grant determined to have been expended for purposes other than as set forth herein as well as any Grant funds, which were previously disbursed but not yet expended by the Grantee.

XXII. 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 given for all purposes: (a) on the delivery date if delivered by electronic mail or by confirmed facsimile; (b) on the delivery date if delivered personally to the Party to whom the same is directed; (c) One business day after deposit with a commercial overnight carrier, with written verification of receipt; or (d) Three business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. The notice address for the Parties shall be the address as set forth in this Agreement, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by notifying Party. The MEDC and Grantee may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.

XXIII. AMENDMENT. This Agreement may not be modified or amended except pursuant to a written instrument signed by the Parties.

XXIV. 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. The terms of this provision shall survive the termination or cancellation of the Agreement

XXV. COUNTERPARTS AND COPIES. The Parties hereby agree that the faxed signatures of the Parties to this Agreement shall be as binding and enforceable as original signatures; and that this Agreement may be executed in multiple counterparts with the counterparts together being deemed to constitute the complete agreement of the Parties. Copies (whether photostatic, facsimile or otherwise) of this Agreement may be made and relied upon to the same extent as though such copy was an original.

XXVI. JURISDICTION. In connection with any dispute between the Parties under this Agreement, the Parties hereby irrevocably submit to jurisdiction and venue of the Michigan circuit courts of the State of Michigan located in Ingham County. Each Party hereby waives and agrees not to assert, by way of motion as a defense or otherwise in any such action any claim (a) that it is not subject to the jurisdiction of such court, (b) that the action is brought in an inconvenient forum, (c) that the venue of the suit, action or other proceeding is improper or (d) that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

XXVII. SURVIVAL. The terms and conditions of sections VII, VIII, XI, XV, XVII, XXIV and XXVI shall survive termination of this Agreement.

XXVIII. PUBLICITY. At the request and expense of the MEDC, the Grantee will cooperate with the MEDC to promote the Grant Activities through one or more of the placement of a sign, plaque, media coverage or other public presentation at the project or other location acceptable to the Parties.

(remainder of page intentionally left blank)

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

GRANTEE ACCEPTANCE:

City of Muskegon

Dated: _____

BY:
ITS:

MEDC ACCEPTANCE:

Michigan Economic Development Corporation

Dated: _____

Adam Robach
Manager, Contract Services

Kitchen 242
Proposed Expenses for Grant from State of MI
Oct-16

Item	QTY	Price	Subtotal
APPLIANCES			
Hood and preparation for installation	1 inclusive	\$ 29,775.00	\$ 29,775.00
Install 3 phase wiring (Belasco)		\$ 1,630.00	\$ 1,630.00
Tilt Skillet	1	\$ 14,145.00	\$ 14,145.00
Convection Oven	1	\$ 5,700.00	\$ 5,700.00
Boilerless Convection Steamer	1	\$ 8,250.00	\$ 8,250.00
Range	1	\$ 2,950.00	\$ 2,950.00
Planetary Mixer	1	\$ 2,600.00	\$ 2,600.00
Planetary Mixer lg	1	\$ 10,875.00	\$ 10,875.00
New steam kettle	1	\$ 16,000.00	\$ 16,000.00
Chocolate cooker	1	\$ 2,800.00	\$ 2,800.00
			\$ 94,725.00
TECHNOLOGY			
Video Surveillance System	1 inclusive	\$ 1,995.00	\$ 1,995.00
Demonstration Mirrors	1	\$ 1,050.00	\$ 1,050.00
Video Display camera and monitor for demos	1	\$ 2,200.00	\$ 2,200.00
Chrome Book/desktop/thin client/wireless	1	\$ 1,000.00	\$ 1,000.00
			\$ 6,245.00
SMALL WARES			
Robo Coupe	1	\$ 3,023.00	\$ 3,023.00
Globe Meat Slicer	1	\$ 6,049.00	\$ 6,049.00
Storage Cabinets	1	\$ 398.99	\$ 398.99
Utility Carts	6	\$ 158.00	\$ 948.00
Knives / various		\$ 250.00	\$ 250.00
Utensils / various		\$ 250.00	\$ 250.00
Baking pans	52	\$ 37.20	\$ 1,934.40
Sheet pans	2	\$ 17.99	\$ 35.98
6inch steam pans	3	\$ 16.29	\$ 48.87
4inch steam pans	21	\$ 11.89	\$ 249.69
2inch steam pans	21	\$ 8.68	\$ 182.28
4inch perforated pans	4	\$ 16.55	\$ 66.20
Colanders, large	3	\$ 85.99	\$ 257.97
Muffin pans 24 ct	2	\$ 30.58	\$ 61.16
Amana Microwave	1	\$ 369.00	\$ 369.00
Amana Microwave	1	\$ 369.00	\$ 369.00
Cambros	11	\$ 183.99	\$ 2,023.89
Camdolly	2	\$ 238.99	\$ 477.98
			\$ 16,995.41
STORAGE			
Mobile Security Cages	7	\$ 583.14	\$ 4,081.98
Combination locks with key overrides	18	\$ 9.00	\$ 162.00
Storage Unit	1	\$ 10,000.00	\$ 10,000.00
			\$ 14,243.98
MISCELLANEAUS			
Automatic floor scrubber	1	\$ 4,100.00	\$ 4,100.00
Folding chairs & Tables	Seating for 100	\$ 9,000.00	\$ 9,000.00
Chair dolly	3	\$ 1,000.00	\$ 3,000.00
Labeling machine	1	\$ 1,595.00	\$ 1,595.00
			\$ 17,695.00
Professional Services			\$ 39,095.61
Includes Kitchen Mgr, Periodic Professional Cleaning, Kitchen maintenance, Database Maintenance			\$ 39,095.61
Marketing			\$ 11,000.00
			\$ 11,000.00
			\$ 200,000.00
			\$ 200,000.00

Date: January 24, 2017
To: Honorable Mayor and City Commissioners
From: Ann Meisch, City Clerk
RE: Western Market Lease Agreement

SUMMARY OF REQUEST: The City has created chalets to be placed on Western Avenue to create affordable retail outlets. Staff will evaluate applications on a first-come-first-serve basis. The intent will be to offer a variety of retail products. The agreement will be from May 1st through October 30th. Chalets will be required to be open on most days from 11 am – 6 pm. Fees shall be for the entire season and shall be set as follows:

90 sq. ft. Chalet \$1125

120 sq. ft. Chalet \$1500

150 sq. ft. Chalet \$1875

A pro-rated rate may be offered for agreements beginning after May 1st.

FINANCIAL IMPACT: Fees collected from the lease agreements.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To authorize staff to sign the agreements with future tenants.

Western Market Lease Agreement

This AGREEMENT made and entered into the _____ day of _____, 2017 by and between the City of Muskegon "City", 933 Terrace Street, Muskegon, MI 49440 and _____ "Tenant" of a certain chalet located on Western Avenue between 1st Street and 2nd Street, Muskegon, MI 49440.

A. The City of Muskegon has agreed to grant a revocable, non-transferable, and non-exclusive use of _____ chalet, on Western Avenue between 1st Street and 2nd Street adjacent to the U.S. Post Office.

B. Tenant has agreed to rent the _____ chalet from the City. Therefore, the parties agree as follows:

1) **Use.** Retail purposes only.

2) **Rent.** Rental amount _____ for the season.

3) **Length of Agreement.** The agreement will take effect on _____ through October 30, 2017. Penalty for vacating premises before term expires is \$50 per day.

4) **Security Deposit** _____.

5) **Trash.** The Tenant is responsible for moving any trash from the public rights of way connected to Tenant's business. If Tenant does not remove trash, the City of Muskegon may remove the trash and bill the Tenant.

6) **Sublease.** The Tenant may not sublease its space in whole or part to any other individual or business. All Tenants must be listed on the original lease unless authorization is given from staff.

7) **Repair & Maintenance.** The City shall be responsible for all repairs unless damage is deliberate by tenant. In this case, the Tenant shall be responsible to pay for any repairs the City shall make.

8) **Damage.** Any damage or permanent changes to the structure shall be repaired and restored by the Tenant or the tenant will be charged any fees incurred by the City of Muskegon.

9) **City Inspections.** City allowed to conduct inspections upon reasonable notice.

10) **Insurance.** The Tenant shall provide a Commercial General Liability Insurance of not less than \$1,000,000 naming the City of Muskegon as the certificate holder. The following language must be listed on the insurance, "ADDITIONAL Insured: City of Muskegon, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof." The insurance policy must be in place and on file in the City Clerk's Office before tenant may commence business.

11) **Operating Covenant.**

- a. The Tenant shall not abandon or leave vacant the chalet and shall not allow anyone other than Tenant, its employees, or agents to occupy it. Tenant shall not conduct an auction, going-out-of-business, bankruptcy sales, or similar practice.
- b. Tenant may not display merchandise outside of the chalet or obstruct the public rights of way without prior written consent from the City of Muskegon.
- c. Tenant must keep their chalet and surrounding area clean, neat, and safe.
- d. Tenant will refrain from using the chalet in any way that is disruptive, a nuisance, annoyance, or an inconvenience.
- e. Tenant must keep the chalet continuously and uninterruptedly open for business and adequately staffed during the following hours:
Low Season - May 1st through June 30th and August 15th through October 30th, open Thursday through Saturday from 11 a.m. to 6 p.m.
High Season - July 1st through August 14th (as well as all cruise ship and festival days)
- Open seven days a week from 11 a.m. to 6 p.m.

Noting that emergencies do arise from time-to-time, a grace period of three absences will be given (unless Tenant has contacted staff and received written authorization for more absences under extenuating circumstances). After three such absences, the Tenant will be fined \$50 for each day they remain closed for the season.

- f. Tenant will maintain a stock of merchandise throughout the season.
- g. Tenant will comply with all laws, ordinances, orders, rules, regulations, and requirements of federal, state, county, and city government regulating the use and occupancy of the chalet.
- h. Tenant will not install any signs on the chalet.
- i. No changes should be made to the structure or the outside of the chalet in such a manner as to detract from the character and standards of the chalet.
- j. Tenant shall not add a generator for electricity unless approved by the City of Muskegon. Only “quiet” generators will be considered.
- l. Tenant shall provide a copy of their sales tax license and any other licenses required by City, State, or Federal government.

12) **Default.** Tenant agrees should tenant breach any provisions in the agreement, the City of Muskegon may at any time declare the Tenant in default and terminate the agreement immediately.

13) **Indemnification.** Tenant shall indemnify City, its officials, etc. against any and all acts arising out of Tenants use of the chalet, and all claims, liability, liens, etc.

14) **Reimbursement.** Tenant agrees that it shall reimburse City of Muskegon for any and all costs and expenses, including reasonable attorneys' fees that City of Muskegon incurs in connection with the enforcement of its rights under this Agreement.

15) **Remedies.** Failure to pay rent; failure to perform any covenant will give the City the right to terminate the Agreement.

16) **Governing Law.** This Agreement shall be governed by the laws of the State of Michigan.

17) **Entire Agreement.** This Agreement shall constitute the entire agreement and supersede any other written or oral agreements between the parties.

18) **Severability.** Should any one or more of the provisions of this Agreement be determined to be unlawful, invalid, or unenforceable, the remaining provisions of this Agreement shall not be impaired.

IN WITNESS WHEREOF, the City of Muskegon and tenant have caused this agreement to be executed on the _____ day of _____.

WITNESSES:

City of Muskegon

By_____

Tenant

By_____

Date: January 17, 2017
To: Honorable Mayor and City Commissioners
From: Engineering
**RE: Everstream GLC Holding Company, LLC – METRO
Act Permit**

SUMMARY OF REQUEST: Approve the request for a permit from Everstream GLC Holding Company, LLC and authorize the Mayor to sign the permit

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the permit and sign the documents.

December 14, 2016



City of Muskegon
933 Terrace St
Muskegon, MI 49443
231-724-6707

Permitting

Everstream GLC Holding Company LLC is looking to apply for a Metro Agreement. I have included a route map of our existing facilities. Everstream GLC Holding Company, LLC has taken over all Great Lakes Coment/Comlink Assets. I have attached a legal Court Doc reflecting the merger.

Items included in this package:

- 3 Copies of Bilateral
- A Certificate of Insurance
- Aerial map of Existing Facilities if Any
- LARA
- Check for \$500.00

Please feel free to contact me with any question via my contact info bellow.

Sincerely,

Zach Bollinger
Network Planning Associate
1515 Turf Lane
East Lansing, MI 48823
517-742-4020
zbollinger@everstream.net

Attachments

**MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU**

Date Received

(FOR BUREAU USE ONLY)

FEB 16 2016

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

FILED**FEB 16 2016**

**ADMINISTRATOR
CORPORATIONS DIVISION**

Name

CT Corporation System

Address

208 S. LaSalle St. Ste. 814

City

Chicago

State

IL

ZIP Code

60604

EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
If left blank, document will be returned to the registered office.

D9459C

**APPLICATION FOR CERTIFICATE OF AUTHORITY
TO TRANSACT BUSINESS IN MICHIGAN
For use by Foreign Limited Liability Companies
(Please read information and instruction on last page)**

Pursuant to the provisions of Act 23, Public Acts of 1993, the undersigned execute the following Application:

1. The name of the limited liability company is:

Everstream GLC Holding Company LLC

2. (Complete this item only if the limited liability company name in Item 1 is not available for use in Michigan.)
The assumed name of the limited liability company to be used in all its dealings with the Bureau and in the transaction of its business in Michigan is:

3. It is organized under the laws of DelawareThe date of its organization is January 25, 2016

The duration of the limited liability company if other than perpetual is _____

4. The address of the office required to be maintained in the state of organization or, if not so required, the principal office of the limited liability company is:

800 West St. Clair, 2nd Floor, Cleveland, Ohio 44113

(Street Address)

(City)

(State)

(ZIP Code)

\$100.00 CC/CJR 211626

CL

5. a. The street address of its registered office in Michigan is:

30600 Telegraph Road, Suite 2345, Bingham Farms

(Street Address)

(City)

, Michigan 48025

(ZIP Code)

b. The mailing address of the registered office, if different than above:

(Street Address or P.O. Box)

(City)

, Michigan

(ZIP Code)

c. The name of the resident agent at the registered office is:

The Corporation Company

6. The Department is appointed the agent of the foreign limited liability company for service of process if no agent has been appointed, or if appointed, the agent's authority has been revoked, the agent has resigned, or the agent cannot be found or served through the exercise of reasonable diligence.

The name and address of a member or manager or other person to whom the administrator is to send copies of any process served on the administrator is: (Must be different than agent shown in Item 5c)

Everstream Holding Company LLC

(Name)

800 West St. Clair Avenue, 2nd Floor, Cleveland, Ohio 44113

(Street Address)

(City)

(State)

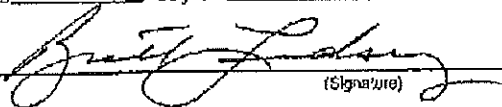
(ZIP Code)

7. The specific business which the limited liability company is to transact in Michigan is as follows:
Telecommunication services.

The limited liability company is authorized to transact such business in the jurisdiction of its organization.

Signed this 15th day of February, 2016

By



(Signature)

Brett Lindsey

(Type or Print Name)

President and CEO

(Type or Print Title)

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "EVERSTREAM GLC HOLDING COMPANY LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SIXTEENTH DAY OF FEBRUARY, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "EVERSTREAM GLC HOLDING COMPANY LLC" WAS FORMED ON THE TWENTY-FIFTH DAY OF JANUARY, A.D. 2016.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



5946080 8300

SR# 20160830500

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed in a small font.

Authentication: 201834233

Date: 02-16-16

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN**

In re:

CHAPTER 11

GREAT LAKES COMNET, INC. *et al.*¹

**CASE NO. 16-00290
(Jointly Administered)**

Debtors.

Hon. John. T. Gregg

**NOTICE OF SALE CLOSING OF SUBSTANTIALLY
ALL OF DEBTORS' ASSETS**

PLEASE TAKE NOTICE that on January 25, 2016, Great Lakes Comnet, Inc. and Comlink L.L.C. (collectively, the "Debtors"), commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code;

PLEASE TAKE FURTHER NOTICE that on February 1, 2016, Debtors filed their Motion for Entry of (A) an Order (i) Establishing Sale Procedures, (ii) Scheduling an Auction and a Sale Hearing in Connection with the Sale of Substantially all of the Debtors' Assets Pursuant to 11 U.S.C. §§ 105, 363 and 365, (iii) Setting Certain Dates and Deadlines in Connection Therewith, (iv) Approving the Form of the Purchase and Sale Agreement, Including the Termination Fee and (v) Granting Related Relief; and (B) an Order (i) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances and Interests Pursuant to 11 U.S.C. §§ 105, 363, and 365, (ii) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to 11 U.S.C. § 365, and (iii) Granting Related Relief [Dkt. No. 72];

PLEASE TAKE FURTHER NOTICE that on March 10, 2016, the Court entered an Order (i) Establishing Sale Procedures, (ii) Scheduling an Auction and a Sale Hearing in Connection with the Sale of Substantially all of the Debtors' Assets Pursuant to 11 U.S.C. §§ 105, 363 and 365, (iii) Setting Certain Dates and Deadlines in Connection Therewith, (iv) Approving the Form of the Purchase and Sale Agreement, Including the Termination Fee and (v) Granting Related Relief [Dkt. No. 235];

PLEASE TAKE FURTHER NOTICE that on March 13, 2016, the Debtors filed an Amended and Restated Purchase Agreement [Dkt. No. 241-1], which established an

¹ The Debtors are Great Lakes Comnet, Inc. (Case No. 16-00290) and Comlink, L.L.C. (Case No. 16-00292).

agreement between them and Everstream GLC Holding Company, LLC (“Everstream”), the stalking horse bidder for substantially all of the Debtors’ assets;

PLEASE TAKE FURTHER NOTICE that Everstream was identified as the Winning Bidder by the Debtors with their filing of a Notice of Cancellation of Auction and Designation of Winning Bidder on April 27, 2016 [Dkt. No. 363];

PLEASE TAKE FURTHER NOTICE that on May 10, 2016, the Court held a hearing approving the sale of substantially all of the Debtors’ assets to Everstream;

PLEASE TAKE FURTHER NOTICE that on May 18, 2016, the Court granted the Sale Motion with its entry of the Order Approving Sale of Assets Pursuant to 11 U.S.C. § 363 [Dkt. No. 405]; and

PLEASE TAKE FURTHER NOTICE that on June 1, 2016, Everstream acquired substantially all of the Debtors assets with the closing of the parties’ sale transaction.

Dated: June 8, 2016

THOMPSON HINE LLP

/s/ Scott B. Lepene

Scott B. Lepene (Ohio Bar #0076763)
3900 Key Center
127 Public Square
Cleveland, OH 44114-1291
(216) 566-5692 (Direct)
(216) 566-5800 (Facsimile)
scott.lepene@thompsonhine.com
(admitted *pro hac vice*)

and

RAYMAN & KNIGHT

Steven L. Rayman (P30882)
141 E. Michigan Ave., Ste. 301
Kalamazoo, MI 49007
(269) 345-5156

*Co-counsel for Everstream GLC Holding
Company, LLC*

CERTIFICATE OF SERVICE

I, Scott B. Lepene, hereby certify that on June 8, 2016, I electronically filed the foregoing *Notice* with the Clerk of the Bankruptcy Court using the ECF system which will send notification of such filing to all ECF participants.

/s/ Scott B. Lepene

Scott B. Lepene



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/14/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Britton Gallagher One Cleveland Center, Floor 30 1375 East 9th Street Cleveland OH 44114	CONTACT NAME: Chris Anderson	
	PHONE (A/C, No, Ext): (216) 658-7855 FAX (A/C, No): (216) 658-7101	
	E-MAIL ADDRESS: Chris.Anderson@BrittonGallagher.com	
INSURED Everstream Holding Company, LLC 1228 Euclid Avenue Suite 250 Cleveland OH 44115	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Continental Insurance Co.	35289
	INSURER B: Valley Forge Insurance Company	20508
	INSURER C: American Casualty Co. of Reading PA	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 16/17

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY			6042861855	7/1/2016	7/1/2017	EACH OCCURRENCE	\$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 100,000	
			MED EXP (Any one person)				\$ 5,000	
			PERSONAL & ADV INJURY				\$ 1,000,000	
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$ 2,000,000
	☐ POLICY ☒ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	\$ 1,000,000
	OTHER:							\$
B	AUTOMOBILE LIABILITY			6042861841	7/1/2016	7/1/2017	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	☒ ANY AUTO		BODILY INJURY (Per person)				\$	
	☐ ALL OWNED AUTOS	☐ SCHEDULED AUTOS	BODILY INJURY (Per accident)				\$	
	☒ HIRED AUTOS	☒ NON-OWNED AUTOS	PROPERTY DAMAGE (Per accident)				\$	
A	☒ UMBRELLA LIAB			6043025641	7/1/2016	7/1/2017	EACH OCCURRENCE	\$ 5,000,000
	☐ EXCESS LIAB	☐ OCCUR	AGGREGATE				\$ 5,000,000	
	☐ DED	☒ RETENTION \$ 10,000					\$	
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			6043096354	7/1/2016	7/1/2017	☒ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N ☐	E.L. EACH ACCIDENT				\$ 1,000,000	
	If yes, describe under DESCRIPTION OF OPERATIONS below		E.L. DISEASE - EA EMPLOYEE				\$ 1,000,000	
			E.L. DISEASE - POLICY LIMIT				\$ 1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is named as Additional Insured under General Liability as required by a written contract per the policy terms.

CERTIFICATE HOLDER

CANCELLATION

City of Muskegon
PO Box 536
Muskegon, MI 49443

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jeremy Bryant/CA

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METRO Act Permit Application Form
Revised February 2, 2015

City of Muskegon

Name of Local Unit of Government

APPLICATION FOR
ACCESS TO AND ONGOING USE OF PUBLIC WAYS
BY
TELECOMMUNICATIONS PROVIDERS
UNDER
METROPOLITAN EXTENSION
TELECOMMUNICATIONS RIGHTS-OF-WAY
OVERSIGHT ACT 2002 PA 48
MCL SECTIONS 484.3101 To 484.3120

BY

Everstream GLC
Holding
Company LLC

Unfamiliar with METRO Act?--Assistance: Municipalities unfamiliar with Michigan Metropolitan Extension Telecommunications Rights-of-Way Oversight Act ("METRO Act") permits for telecommunications providers should seek assistance, such as by contacting the Telecommunications Division of the Michigan Public Service Commission at 517-284-8190 or via its web site at http://www.michigan.gov/mpsc/0,4639.7-159-16372_22707---,00.html.

45 Days to Act—Fines for Failure to Act: The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3). The Michigan Public Service Commission can impose fines of up to \$40,000 per day for violations of the METRO Act. It has imposed fines under the Michigan Telecommunications Act where it found providers or municipalities violated the statute.

Where to File: Applicants should file copies as follows [municipalities should adapt as appropriate—unless otherwise specified service should be as follows] :

- Three (3) copies (one of which shall be marked and designated as the master copy) with the Clerk at [insert address].

933 Terrace Street, P.O. Box 536 Muskegon, MI 49443

City of Muskegon

Name of local unit of government

APPLICATION FOR
ACCESS To AND ONGOING USE OF PUBLIC WAYS BY
TELECOMMUNICATIONS PROVIDERS

By
Everstream GLC Holding Company
("APPLICANT")

This is an application pursuant to Sections 5 and 6 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, 2002 PA 48 (the "METRO Act") for access to and ongoing usage of the public right-of-way, including public roadways, highways, streets, alleys, easements, and waterways ("Public Ways") in the Municipality for a telecommunications system. The METRO Act states that "A municipality shall approve or deny access under this section within 45 days from the date a provider files an application for a permit for access to a public right-of-way." MCL 484.3115(3).

This application must be accompanied by a one-time application fee of \$500, unless the applicant is exempt from this requirement under Section 5(3) of the METRO Act, MCL 484.3105(3).

1 GENERAL INFORMATION:

1.1 Date: 12/13/2016

1.2 Applicant's legal name: Everstream GLC Holding Company Mailing
Address:

ATTN: Zach Bollinger

1228 Euclid Ave #250

Cleveland, OH 44115

Telephone Number: 517-742-4020

Fax Number: _____

Corporate website: everstream.net

Name and title of Applicant's local manager (and if different) contact person regarding this application:

Brian Kunter, OSP Manager

Mailing Address:

Everstream, 1228 Euclid Ave #250, Cleveland, OH 44115

Telephone Number:

616-608-8945

Fax Number:

E-mail Address:

bkunter@everstream.net

1.3 Type of Entity: (Check one of the following)

- ☐ Corporation
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ Limited Liability Company
- ☐ Individual
- ☐ Other, please describe:

1.4 Assumed name for doing business, if any:

1.5 Description of Entity:

1.5.1 Jurisdiction of incorporation/formation;

1.5.2 Date of incorporation/formation;

1.5.3 If a subsidiary, name of ultimate parent company;

1.5.4 Chairperson, President/CEO, Secretary and Treasurer (and equivalent officials for non-corporate entities).

1.6 Attach copies of Applicant's most recent annual report (with state ID number) filed with the Michigan Department of Licensing and Regulatory Affairs and certificate of good standing with the State of Michigan. For entities in existence for less than one year and for noncorporate entities, provide equivalent information.

1.7 Is Applicant aware of any present or potential conflicts of interest between Applicant and Municipality? If yes, describe:

1.8 In the past three (3) years, has Applicant had a permit to install telecommunications facilities in the public right of way revoked by any Michigan municipality?

Circle: Yes ☒ No

If "yes, "please describe the circumstances.

1.9 In the past three (3) years, has an adverse finding been made or an adverse final action been taken by any Michigan court or administrative body against Applicant under any law or regulation related to the following:

1.9.1 A felony; or

1.9.2 A revocation or suspension of any authorization (including cable franchises) to provide telecommunications or video programming services?

Circle: Yes ☐ No ☒

If "yes, please attach a full description of the parties and matters involved, including an identification of the court or administrative body and any proceedings (by dates and file numbers, if applicable), and the disposition of such proceedings.

1.10 [If Applicant has been granted and currently holds a license to provide basic local exchange service, no financial information needs to be supplied.] If publicly held, provide Applicant's most recent financial statements. If financial statements of a parent company of Applicant (or other affiliate of Applicant) are provided in lieu of those of Applicant, please explain.

1.10.1 If privately held, and if Municipality requests the information within 10 days of the date of this Application, the Applicant and the Municipality should make arrangements for the Municipality to review the financial statements.

If no financial statements are provided, please explain and provide particulars.

2 DESCRIPTION OF PROJECT:

See Attachment

2.1 Provide a copy of authorizations, if applicable, Applicant holds to provide telecommunications services in Municipality. If no authorizations are applicable, please explain.

2.2 Describe in plain English how Municipality should describe to the public the telecommunications services to be provided by Applicant and the telecommunications facilities to be installed by Applicant in the Public Ways.

2.3 Attach route maps showing the location (including whether overhead or underground) of Applicant's existing and proposed facilities in the public right-of-way. To the

4 **CERTIFICATION:**

All the statements made in the application and attached exhibits are true and correct to the best of my knowledge and belief.

NAME OF ENTITY ("APPLICATION")

Everstream GLC Holding Company, LLC

12/13/2016

Date

By: 

Type or Print Name: Brian Kunter

OSP Manager

Title

S:\metroapplicationform.doc

1.5.4

Chairperson – Gillis Cashman

President/CEO – Brett Lindsey

Secretary – Marlene Piatak

Treasurer – Christian Gartner

Contact Number – 844-387-7876

2.1 – N/A No Existing Facilities Currently.

2.2 – Communications Company, Provides Long haul Transport services along with Voice & Data to Business Customers.

2.3 - No Existing Facilities. No current Projects ready to apply for Permitting yet.

2.4 – N/A

2.5 – Everstream GLC Holding Company, LLC

2.6 – Zach Bollinger, Network Planning Associate. 1515 Turf Lane, East Lansing, MI 48823.

517-742-4020, zbollinger@everstream.com

3.5 – EarthCom

3424 Corwin rd

Williamston, MI 48895

517-482-1750

**METRO Act Permit
Bilateral Form
Revised 12/06/02**

**RIGHT-OF-WAY
TELECOMMUNICATIONS PERMIT**

TERMS AND CONDITIONS

1 Definitions

- 1.1 Company shall mean Everstream GLC Holding Company, LLC organized under the laws of the State of Michigan whose address is 1228 Euclid Ave Suite 250, Cleveland, OH 44115.
- 1.2 Effective Date shall mean the date set forth in Part 13.
- 1.3 Manager shall mean Municipality's [Mayor/Manager/Supervisor/Village President] or his or her designee.
- 1.4 METRO Act shall mean the Metropolitan Extension Telecommunications Rightsof-Way Oversight Act, Act No. 48 of the Public Acts of 2002, as amended.
- 1.5 Municipality shall mean City of Muskegon, a Michigan municipal corporation.
- 1.6 Permit shall mean this document.
- 1.7 Public Right-of-Way shall mean the area on, below, or above a public roadway, highway, street, alley, easement, or waterway, to the extent Municipality has the ability to grant the rights set forth herein. Public right-of-way does not include a federal, state, or private right-of-way.
- 1.8 Telecommunication Facilities or Facilities shall mean the Company's equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes, and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication Facilities or Facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in Section 332(d) of Part I of Title III of the Communications Act of 1934, Chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio

service in 47 CFR 20.3, and service provided by any wireless, 2-way communications device.

1.9 Term shall have the meaning set forth in Part 7.

2 Grant

2.1 Municipality hereby grants a permit under the METRO Act to Company for access to and ongoing use of the Public Right-of-Way to construct, install and maintain Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A on the terms set forth herein.

2.1.1 Exhibit A may be modified by written request by Company and approval by Manager.

2.1.2 Manager shall not unreasonably condition or deny any request for a modification of Exhibit A. Any decision of Manager on a request for a modification may be appealed by Company to Municipality's legislative body.

2.2 Overlashing. Company shall not allow the wires or any other facilities of a third party to be overlashed to the Telecommunication Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the Michigan Public Service Commission under Section 361 of the Michigan Telecommunications Act, MCL § 484.2361.

2.3 Nonexclusive. The rights granted by this Permit are nonexclusive. Municipality reserves the right to approve, at any time, additional permits for access to and ongoing usage of the Public Right-of-Way by telecommunications providers and to enter into agreements for use of the Public Right-of-Way with and grant franchises for use of the Public Right-of-Way to telecommunications providers, cable companies, utilities and other providers.

3 Contacts, Maps and Plans

3.1 Company Contacts. The names, addresses and the like for engineering and construction related information for Company and its Telecommunication Facilities are as follows:

3.1.1 The address, e-mail address, phone number and contact person (title or name) at Company's local office (in or near Municipality) is Zach Bollinger, Network Planning Associate. 1228 Euclid Ave Suite 250, Cleveland, OH 44115. 517-742-4020, zbollinger@everstream.net.

- 3.1.2 If Company's engineering drawings, as-built plans and related records for the Telecommunication Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them is Brian Kunter, OSP Manager. 1228 Euclid Ave Suite 250, Cleveland, OH 44115. 517-608-8945, bkunter@everstream.net.
- 3.1.3 The name, title, address, e-mail address and telephone numbers of Company's engineering contact person(s) with responsibility for the design, plans and construction of the Telecommunication Facilities is Brian Kunter, OSP Manager. 1228 Euclid Ave Suite 250, Cleveland, OH 44115. 517-608-8945, bkunter@everstream.net.
- 3.1.4 The address, phone number and contact person (title or department) at Company's home office/regional office with responsibility for engineering and construction related aspects of the Telecommunication Facilities is Brian Kunter, OSP Manager. 1228 Euclid Ave Suite 250, Cleveland, OH 44115. 517-608-8945, bkunter@everstream.net.
- 3.1.5 Company shall at all times provide Manager with the phone number at which a live representative of Company (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.
- 3.1.6 The preceding information is accurate as of the Effective Date. Company shall notify Municipality in writing as set forth in Part 12 of any changes in the preceding information.
- 3.2 Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in a Municipality, a provider shall submit route maps showing the location of the Telecommunication Facilities to both the Michigan Public Service Commission and to the Municipality, as required under Section 6(7) of the METRO Act, MCLA 484.3106(7).
- 3.3 As-Built Records. Company, without expense to Municipality, shall, upon fortyeight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Telecommunication Facilities or portions thereof in the Public Right-of-Way. Upon request by Municipality, Company shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Telecommunication Facilities.

4 Use of Public Right-of-Way

- 4.1 No Burden on Public Right-of-Way. Company, its contractors, subcontractors, and the Telecommunication Facilities shall not unduly burden or interfere with the

present or future use of any of the Public Right-of-Way. Company's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Telecommunication Facilities constitutes an undue burden or interference, due to changed circumstances, Company, at its sole expense, shall modify the Telecommunication Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Company shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 4.2 No Priority. This Permit does not establish any priority of use of the Public Right-of-Way by Company over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public generally, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 4.3 Restoration of Property. Company, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Company's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Telecommunication Facilities to a reasonably equivalent (or, at Company's option, better) condition as that which existed prior to the disturbance. In the event that Company, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Company shall pay the costs Municipality incurred for such repair.
- 4.4 Marking. Company shall mark the Telecommunication Facilities as follows: Aerial portions of the Telecommunication Facilities shall be marked with a marker on Company's lines on alternate poles which shall state Company's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Telecommunication Facilities shall have (1) a conducting wire placed in the ground at least several inches above Company's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) stakes or other appropriate above ground markers with Company's name and a toll-free number indicating that there is buried telephone cable below. Bored underground portions of the Telecommunication Facilities shall have a conducting wire at the same depth as the cable and shall not be required to provide the continuous colored tape. Portions of the Telecommunication Facilities located in conduit, including conduit of others

used by Company, shall be marked at its entrance into and exit from each manhole and handhole with Company's name and a toll-free telephone number.

- 4.5 Tree Trimming. Company may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Telecommunication Facilities, consistent with any standards adopted by Municipality. Company shall dispose of all trimmed materials. Company shall minimize the trimming of trees to that essential to maintain the integrity of the Telecommunication Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.
- 4.6 Installation and Maintenance. The construction and installation of the Telecommunication Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or his designee. Company shall install and maintain the Telecommunication Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Company's use, or the facilities of all users of the poles are required to go underground then Company shall, at its expense, place such portion of its Telecommunication Facilities underground, unless Municipality approves an alternate location. Company may perform maintenance on the Telecommunication Facilities without prior approval of Municipality, provided that Company shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.
- 4.7 Pavement Cut Coordination. Company shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").
- 4.7.1 The goals of such coordination shall be to encourage Company to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.
- 4.8 Compliance with Laws. Company shall comply with all laws, statutes, ordinances, rules and regulations regarding the construction, installation, and maintenance of its Telecommunication Facilities, whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Company shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals.

Company shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Company shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended. This section does not constitute a waiver of Company's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.

- 4.9 Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Company's Facilities in the vacated Public Right-of-Way, Company shall, as a condition of this Permit, consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Company shall relocate its Facilities to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards.
- 4.10 Relocation. If Municipality requests Company to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Company shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Company mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 4.11 Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Company if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to Company. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Company shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.
- 4.12 Miss Dig. If eligible to join, Company shall subscribe to and be a member of "MISS DIG," the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL § 460.701 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- 4.13 Underground Relocation. If Company has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications

provider relocates its system underground, then Company shall relocate its Facilities underground in the same location at Company's sole cost and expense.

- 4.14 Identification. All personnel of Company and its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing Company's name, their name and photograph. Company shall account for all identification cards at all times. Every service vehicle of Company and its contractors or subcontractors shall be clearly identified as such to the public, such as by a magnetic sign with Company's name and telephone number.

5 Indemnification

- 5.1 Indemnity. Company shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "claim" for this Part 5) (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Company, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to the Company's use of or installation of facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Company, its officers, agents, employees, contractors, successors and assigns.
- 5.2 Notice, Cooperation. Municipality shall notify Company promptly in writing of any such claim and the method and means proposed by Municipality for defending or satisfying such claim. Municipality shall cooperate with Company in every reasonable way to facilitate the defense of any such claim. Municipality shall consult with Company respecting the defense and satisfaction of such claim, including the selection and direction of legal counsel.
- 5.3 Settlement. Municipality shall not settle any claim subject to indemnification under this Part 5 without the advance written consent of Company, which consent shall not be unreasonably withheld. Company shall have the right to defend or settle, at its own expense, any claim against Municipality for which Company is responsible hereunder.

6 Insurance

- 6.1 Coverage Required. Prior to beginning any construction in or installation of the Telecommunication Facilities in the Public Right-of-Way, Company shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the Term.

In the alternative, Company may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

- 6.1.1 Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).
 - 6.1.2 Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.
 - 6.1.3 Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
 - 6.1.4 Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
 - 6.1.5 The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the Term, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 6.2 Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Company shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.

- 6.3 Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.
- 6.4 Deductibles. If the insurance policies required by this Part 6 are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Company shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 6.5 Contractors. Company's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of this Part 6. In the alternative, Company, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Company's policies).
- 6.6 Insurance Primary. Company's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Company's insurance and shall not contribute to it (where "insurance or selfinsurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

7 Term

- 7.1 Term. The term ("Term") of this Permit shall be until the earlier of:

- 7.1.1 Fifteen years (15) from the Effective Date; provided, however, that following such initial term there shall be three subsequent renewal terms of five (5) years. Each renewal term shall be automatic unless Municipality notifies Company in writing, at least twelve (12) months prior to the end of any term then in effect, that due to changed circumstances a need exists to negotiate the subsequent renewal with Company. Municipality shall not unreasonably deny a renewal term; or

- 7.1.2 When the Telecommunication Facilities have not been used to provide telecommunications services for a period of one hundred and eighty (180) days by the Company or a successor of an assign of the Company; or
- 7.1.3 When Company, at its election and with or without cause, delivers written notice of termination to Municipality at least one-hundred and eighty (180) days prior to the date of such termination; or
- 7.1.4 Upon either Company or Municipality giving written notice to the other of the occurrence or existence of a default by the other party under Sections 4.8, 6, 8 or 9 of this Permit and such defaulting party failing to cure, or commence good faith efforts to cure, such default within sixty (60) days
(or such shorter period of time provided elsewhere in this Permit) after delivery of such notice; or
- 7.1.5 Unless Manager grants a written extension, one year from the Effective Date if prior thereto Company has not started the construction and installation of the Telecommunication Facilities within the Public Right-of-Way and two years from the Effective Date if by such time construction and installation of the Telecommunication Facilities is not complete.

8 Performance Bond or Letter of Credit

- 8.1 Municipal Requirement. Municipality may require Company to post a bond (or letter of credit) as provided in Section 15(3) of the METRO Act, as amended [MCL § 484.3115(3)].

9 Fees

- 9.1 Establishment; Reservation. The METRO Act shall control the establishment of right-of-way fees. The parties reserve their respective rights regarding the nature and amount of any fees which may be charged by Municipality in connection with the Public Right-of-Way.

10 Removal

- 10.1 Removal; Underground. As soon as practicable after the Term, Company or its successors and assigns shall remove any underground cable or other portions of the Telecommunication Facilities from the Public Right-of-Way which has been installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Company shall not remove any underground cable or other portions of the Telecommunication Facilities which requires trenching or

other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Company's sole cost and expense.

10.1.1 For purposes of this Part 10, "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

10.2 Removal; Above Ground. As soon as practicable after the Term, Company, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Telecommunication Facilities, including but not limited to poles, pedestal mounted terminal boxes, and lines attached to or suspended from poles.

10.3 Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the Term. Portions of the Telecommunication Facilities in the Public Right-of-Way which are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Company as set forth in Part 12, title to the portions described in such notice shall vest in Municipality.

11 Assignment. Company may assign or transfer its rights under this Permit, or the persons or entities controlling Company may change, in whole or in part, voluntarily, involuntarily, or by operation of law, including by merger or consolidation, change in the ownership or control of Company's business, or by other means, subject to the following:

11.1 No such transfer or assignment or change in the control of Company shall be effective under this Permit, without Municipality's prior approval (not to be unreasonably withheld), during the time period from the Effective Date until the completion of the construction of the Telecommunication Facilities in those portions of the Public Right-of-Way identified on Exhibit A.

11.2 After the completion of such construction, Company must provide notice to Municipality of such transfer, assignment or change in control no later than thirty (30) days after such occurrence; provided, however,

11.2.1 Any transferee or assignee of this Permit shall be qualified to perform under its terms and conditions and comply with applicable law; shall be subject to the obligations of this Permit, including responsibility for any defaults which occurred prior to the transfer or assignment; shall supply Municipality with the information required under Section 3.1; and shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary, and

11.2.2 In the event of a change in control, it shall not be to an entity lacking the qualifications to assure Company's ability to perform under the terms and conditions of this Permit and comply with applicable law; and Company shall comply with any updated insurance and performance bond requirements under Sections 6 and 8 respectively, which Municipality reasonably deems necessary.

11.3 Company may grant a security interest in this Permit, its rights thereunder or the Telecommunication Facilities at any time without notifying Municipality.

12 Notices

12.1 Notices. All notices under this Permit shall be given as follows:

12.1.1 If to Municipality, to City of Muskegon, 933 Terrace St #536, Muskegon, MI 49443.

12.1.2 If to Company, to Everstream GLC Holding Company, LLC 1228 Euclid Ave #250, Cleveland, OH 44115.

12.2 Change of Address. Company and Municipality may change its address or personnel for the receipt of notices at any time by giving notice thereof to the other as set forth above.

13 Other items

13.1 No Cable, OVS. This Permit does not authorize Company to provide commercial cable type services to the public, such as "cable service" or the services of an "open video system operator" (as such terms are defined in the Federal Communications Act of 1934 and implementing regulations, currently 47 U.S.C. §§ 522 (6), 573 and 47 CFR § 76.1500).

13.2 Duties. Company shall faithfully perform all duties required by this Permit.

13.3 Effective Date. This Permit shall become effective when issued by Municipality and Company has provided any insurance certificates and bonds required in Parts 6 and 8, and signed the acceptance of the Permit.

13.4 Authority. This Permit satisfies the requirement for a permit under Section 5 of the METRO Act [MCL 484.3105].

13.5 Amendment. Except as set forth in Section 2.1 this Permit may be amended by the written agreement of Municipality and Company.

13.6 Interpretation and Severability. The provisions of this Permit shall be liberally construed to protect and preserve the peace, health, safety and welfare of the public, and should any provision or section of this Permit be held unconstitutional, invalid, overbroad or otherwise unenforceable, such determination/holding shall not be construed as affecting the validity of any of the remaining conditions of this Permit. If any provision in this Permit is found to be partially overbroad, unenforceable, or invalid, Company and Municipality may nevertheless enforce such provision to the extent permitted under applicable law.

13.7 Governing Law. This Permit shall be governed by the laws of the State of Michigan.

City of Muskegon

Attest:

By: _____
Clerk

By: _____
Its: _____
Date: _____

“Company accepts the Permit granted by Municipality upon the terms and conditions contained therein.”

Everstream GLC Holding Company, LLC

By: _____
Its: _____
Date: _____

::ODMA\PCDOCS\GRR\759319\6

Exhibit A

Public Right-of-Way to be Used by Telecommunication Facilities

Exhibit B

Bond

LEGEND

- MPHI Site
- Customer Site
- CO, POP, Hut, Cabinet
- Off-Net Site
- AT&T Tower
- T-Mobile Tower
- IRU Fiber
- Aerial Fiber
- Underground Fiber
- Leased Conduit Fiber
- Bloomingtondale Aerial Fiber
- Bloomingtondale Underground Fiber
- See Pop-up Note

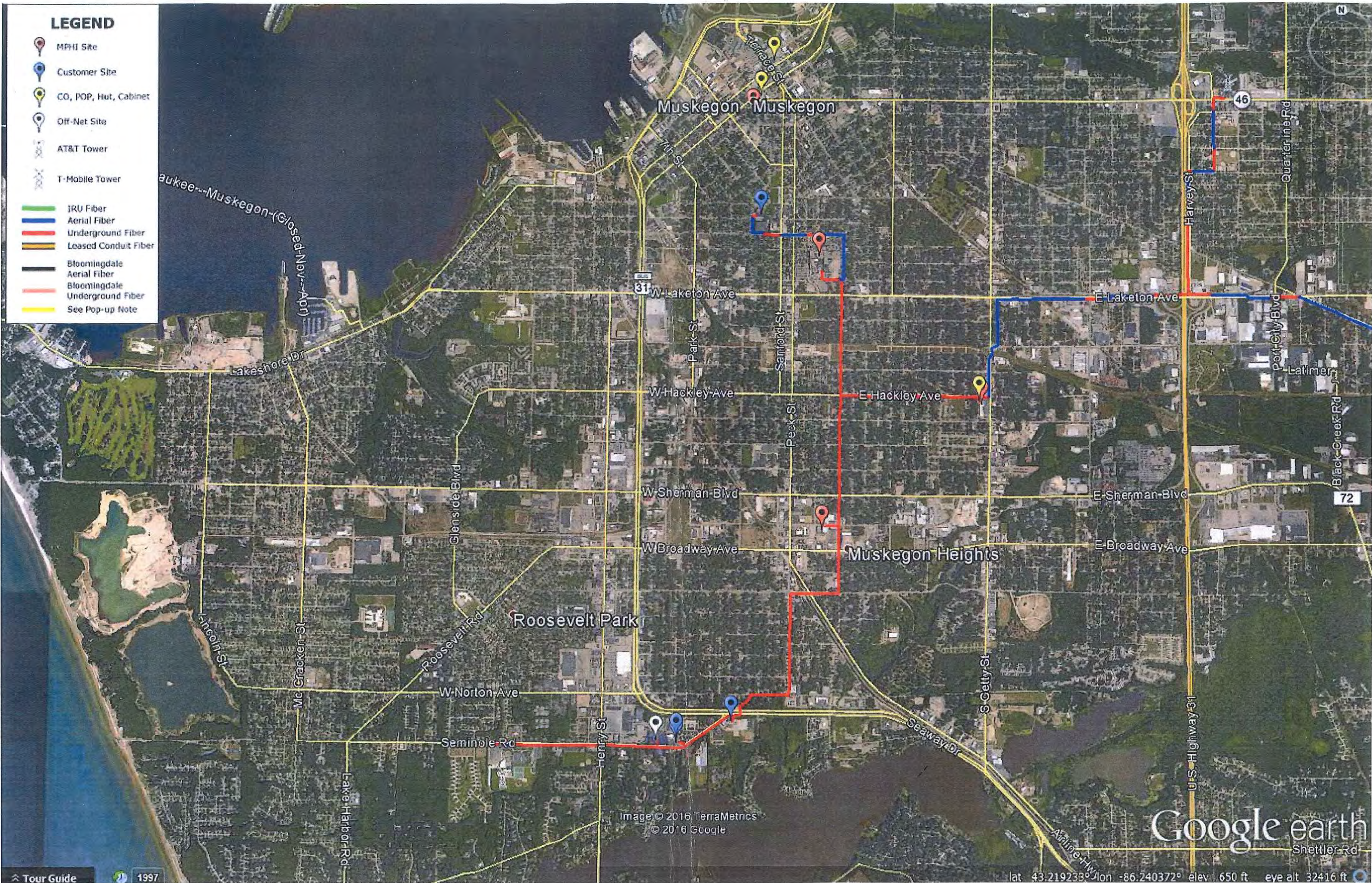


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Google earth
Shettler Rd

COMMISSION MEETING DATE: January 24th, 2017

Date: January 17th, 2017

To: Honorable Mayor and City Commissioners

From: Director of Public Safety Jeffrey Lewis

RE: Professional Service Agreement (SAFEbuilt)

SUMMARY OF REQUEST:

The Director of Public Safety requests that the Commission review and authorize this Professional Service Agreement between the City of Muskegon and SAFEbuilt LLC. SAFEbuilt has performed satisfactorily since the fall of 2012; said contract expired in December of 2016. The new service contract has expanded SAFEbuilt's responsibilities to include, but not be limited to, "*Dangerous Abandoned Buildings*". The contract reflects adjusted shared percentages and other financial adjustments to effectively perform and enhance the quality of service SAFEbuilt is to provide the City of Muskegon. The proposed agreement is to commence this month, January 2017, and concludes on December 31st, 2024.

Included in the attached service agreement are the following exhibits;

Scope of Service, Fee Schedule, Performance Standard(s), and Lease Agreement.

FINANCIAL IMPACT:

Budgeted – the goal is to be cost neutral

BUDGET ACTION REQUIRED:

Adjust 2017 Fee Schedule

STAFF RECOMMENDATION:

Staff recommends approval of proposed new Professional Service Agreement between the City of Muskegon & SAFEbuilt of Troy, Michigan.

CITY OF MUSKEGON, MICHIGAN

PROFESSIONAL SERVICES AGREEMENT

This Agreement for Professional Services ("Agreement") is entered into by and between the City of Muskegon, a Michigan municipal corporation, 933 Terrance Street, Muskegon, MI 49440, ("City") and SAFEbuilt Michigan, LLC, ("SAFEbuilt"), licensed to do business in the State of Michigan, whose address is 200 East Big Beaver Road, Troy, Michigan 48083. City and SAFEbuilt are individually referred to as a "Party" and may be collectively referenced as the "Parties."

RECITALS AND REPRESENTATIONS

WHEREAS, the City has the responsibility under State laws and City Ordinance to adopt and enforce certain building codes and other ordinances, conduct inspections, review building plans, and conduct other professional services as described in this Agreement; and

WHEREAS, SAFEbuilt has represented to the City that it has substantial knowledge and experience in the interpretation and application of the City's adopted Code of Ordinances with regard to various building construction, including but not limited to, the inspection of buildings to determine compliance with State laws and City ordinances, which include building codes, the review of building plans and other building code services.

WHEREAS, SAFEbuilt represents that SAFEbuilt has the skill, ability, and expertise to perform the services described in this Agreement; and

WHEREAS, the City desires to engage SAFEbuilt to provide the services described in this Agreement subject to the terms and conditions of the Agreement.

NOW, THEREFORE, in consideration of the benefits and obligations of this Agreement, the Parties mutually agree as follows:

1.0 AGREEMENT

1.1 References to "SAFEbuilt" shall include any employees of SAFEbuilt, its contractors, subcontractors, independent contractors.

2.0 SERVICES

2.1 Services. As directed by and under the supervision of the Director of Public Safety, or his/her designee, SAFEbuilt shall provide the City with the services described in **Exhibit A** ("Scope of Services").

2.2 Building Official. City and SAFEbuilt agree to jointly hire the City's Building Official. Although jointly employed, City and SAFEbuilt agree City has no obligation to compensate the Building official in any way and that all compensation, fringe benefits, including retirement programs and insurance, shall be provided by SAFEbuilt. The Building Official shall report to the Director of Public Safety, but SAFEbuilt shall be fully responsible for training, overseeing, and managing the Building Official.

2.3 Changes to Services. The City may request a change or changes in the Services. Any changes to Services that are mutually agreed upon between the City and SAFEbuilt shall be made in writing which shall specifically designate any changes in compensation for the Services and be made an amendment to the Agreement after approval by City Commission. To be effective, any changes must be approved by City Commission, and signed by SAFEbuilt and the Mayor and City Clerk.

3.0 COMPENSATION

3.1 Commencement of Services. Following execution of this Agreement by both Parties and on the Effective Date of December 01, 2016, SAFEbuilt shall be authorized to commence performance of the Services subject to the requirements and limitations on compensation as provided by this Section 3.0 and its subsections.

3.2 Building Department Compensation. Unless otherwise provided, SAFEbuilt shall receive 82% of all adopted building department fees that are collected by the City each month except the following: rental property and associated fees; and certificate of occupancy fees. The City shall retain the remaining 18% of the fees.

3.3 Rental Program/Code Enforcement Compensation. SAFEbuilt shall receive payment as specified in **Exhibit B**.

3.4 Dangerous Building Compensation. SAFEbuilt shall receive payment as specified in **Exhibit B**.

3.5 Municipal Civil Infractions (MCI) Compensation. SAFEbuilt and the City shall receive a 50/50 split of recovered fees (after sent to collections).

3.6 Hourly Fees. Where a permit fee is not collected for the service performed or if SAFEbuilt is required by the City to perform any service not included as part of its Scope of Services outlined in **Exhibit A**, the City shall be responsible for the hourly rate listed in **Exhibit B**. That hourly rate includes pay rate, overhead, profit, travel necessary to perform the task and all other costs to SAFEbuilt. This hourly rate would also apply to any services for which a fee has been collected but the City has requested that services be performed by SAFEbuilt, when SAFEbuilt is required to perform any service not included as part of its Scope of Services outlined in **Exhibit A**.

3.7 Misc. Compensation. The City will discontinue the practice of charging SAFEbuilt for postage, copy machine rent, phone rent, and information technology service. The City will begin to supply paper and envelopes. SAFEbuilt postage allowance shall be capped at \$10,000 annually; envelope supply will be capped at 18,000 envelopes and paper supply will be capped at 18 cases..

3.8 Responsibility for Outstanding Permits. SAFEbuilt will report on the number of open permits quarterly, providing assurance that the City is covered for open permits and shall receive payment as specified in **Exhibit B**.

3.9 Collection of Fees. The Building Department, through SAFEbuilt, shall collect Building Department fees on behalf of the City.

3.9.1 No Reimbursable Expenses. No "reimbursable expenses" or other fee, cost, charge, or fee for the value or expense of any materials, goods, travel, mileage, depreciation, or other item related to the performance of the Services shall be paid by the City. Any cost, charge, fee, or expense incurred by SAFEbuilt in the performance of the Services shall be deemed a non-reimbursable cost and shall be borne by SAFEbuilt and shall not be billed or invoiced to the City and shall not be paid by the City.

3.9.2 Free or Reduced Cost Services. The Parties recognize and understand that the City is or may be required by law to waive inspection fees on a limited number of projects during a calendar year or may, at its discretion, waive or reduce inspection fees for certain projects that provide a substantial and direct public benefit (e.g., City owned buildings, inspection related to court cases or following up services directed by a court of law). The City shall notify SAFEbuilt of such circumstance(s) at the earliest opportunity and the City may request SAFEbuilt to perform building and inspection services at no cost or at a reduced cost.

- 3.9.3 Increases in Compensation or Addition of Reimbursable Expenses. Any increases or modification of compensation or the addition of a reimbursable expense(s) shall be subject to written amendment of this Agreement approved by City Commission and executed by both Parties.

3.10 Payment Processing. SAFEbuilt shall submit invoices and requests for payment in a form acceptable to the City. Invoices shall be submitted by the 15th of each month unless otherwise approved by this Agreement or in writing by the City. All invoices shall contain sufficient information to account for all SAFEbuilt time (or other appropriate measure(s) of work effort for the Services during the stated period of the invoice. Invoices shall be given to the Director of Public Safety with a computation of the fees received and a total amount on which the 82% payment request is based (Building Department Only). The City shall have thirty (30) days from receipt of the invoice to issue payment to SAFEbuilt's corporate offices at: SAFEbuilt; 3755 Precision Drive, Suite 140; Loveland, CO 80538 unless there is a dispute as to the amount due and owing. If there is a dispute, the parties shall use the procedures set out in paragraph 3.7.

3.11 City's Dispute of Amount of Payment. The City may request additional information from SAFEbuilt substantiating any and all compensation sought by SAFEbuilt before accepting the invoice. When additional information is requested by the City, the City shall advise SAFEbuilt in writing, identifying the specific item(s) that are in dispute and giving specific reasons for any request for information. The City shall pay SAFEbuilt within thirty (30) days of the receipt of an invoice for any undisputed charges or, if the City disputes an item or invoice and additional information is requested, within thirty (30) days of acceptance of the item or invoice by the City following receipt of the information requested and resolution of the dispute. To the extent possible, undisputed charges within the same invoice as disputed charges shall be timely paid in accordance with this Agreement. Payment by the City shall be deemed made and completed upon hand delivery to SAFEbuilt or designee of SAFEbuilt or upon deposit of such payment in the U.S. Mail, postage pre-paid, addressed to SAFEbuilt.

4.0 SAFEBUILT'S GENERAL RESPONSIBILITIES

4.1 Reference to "SAFEbuilt" under this Section shall include SAFEbuilt employees, contractors, subcontractors, independent contractors, or anyone performing services under this Agreement for SAFEbuilt.

4.2 The City shall supply SAFEbuilt with individual identification badges ("ID badges") for each SAFEbuilt employee. The City shall have the discretion to determine the type, size and design for those ID badges. SAFEbuilt shall require that all employees have their ID badges visible to the public at all times while performing services under this Agreement. Lost ID badges shall be immediately reported to the Director of Public Safety.

4.3 SAFEbuilt shall provide to the City the work telephone numbers of all employees, including any mobile telephones that will be used while performing services under this Agreement.

4.4 The City shall provide copies and amendments of the City Code of Ordinances, Michigan State Building Codes, street maps or other relevant code books or materials to SAFEbuilt. These Code of Ordinances, Michigan State Codes, street maps and all other materials shall remain the property of the City and shall be turned into the City at the termination of this Agreement. SAFEbuilt shall become familiar with those codes and any unusual applications of those codes to City issues. SAFEbuilt is obligated to affirmatively request from the City such information that SAFEbuilt, based on SAFEbuilt's professional experience, should reasonably expect is available and which would be relevant to the performance of the Services.

4.5 SAFEbuilt shall perform the Services in accordance with this Agreement and shall promptly inform the City concerning ambiguities and uncertainties related to SAFEbuilt's performance that are not addressed by the Agreement.

- 4.6 SAFEbuilt shall employ a sufficient number of employees sufficiently experienced and knowledgeable to perform the Services in a timely and prompt manner and such employees shall at all times act in a professional, polite, and courteous manner to all persons regardless of the circumstances.
- 4.7 SAFEbuilt shall not allow employees, contractors, or subcontractors that are convicted of specific crimes to do work in the City. Those crimes include, but are not limited to, fraud, theft, criminal sexual conduct, assaultive or violent behavior, serious moral turpitude, gambling, prostitution, weapons violations, tax evasion, or controlled substances.
- 4.8 SAFEbuilt shall promptly comply with any written City request for the City or any of its duly authorized representatives to reasonably access and review any books, documents, and papers, other than SAFEbuilt's financial records, that are pertinent to SAFEbuilt's performance under this Agreement for the purpose of the City performing an audit, examination, or other review of the Services.
- 4.9 SAFEbuilt shall comply with all applicable federal, state and local laws, ordinances, regulations, and resolutions.
- 4.10 SAFEbuilt shall be responsible at SAFEbuilt's expense for obtaining, and maintaining in a valid and effective status, all licenses and permits necessary to perform the Services unless specifically stated otherwise in this Agreement. SAFEbuilt shall supply copies to the City of appropriate licenses and permits for any individual performing services under this Agreement.
- 4.11 If requested by the City, SAFEbuilt shall make the appropriate employees, contractors, subcontractors, agents and independent contractors available for court proceeding, as witnesses, expert witnesses or otherwise, instituted by or involving the City in either criminal or civil matters which involve services performed under this Agreement, including but not limited to, appearances at pre-trials, hearings, bench trials, jury trial and at all other times requested by the City.
- 4.12 SAFEbuilt shall make the appropriate employee, contractor, subcontractor, and independent contractor available for consultation with the Director of Public Safety and the City Attorney, or their designees, to discuss issues regarding litigation and/or matters of interest to City Commission or the public.

5.0 PERFORMANCE STANDARDS

- 5.1 In performing the Services, SAFEbuilt shall use that degree of care, skill, and professionalism ordinarily exercised under similar circumstances by members of the same profession practicing or performing the substantially same or similar services in the State of Michigan. SAFEbuilt represents to the City that SAFEbuilt is, and its employees performing such Services are, properly licensed and/or registered within the State of Michigan for the performance of the Services (if licensure and/or registration is required by applicable law) and that SAFEbuilt and employees possess the skills, knowledge, and abilities to competently, timely, and professionally perform the Services in accordance with this Agreement. In addition, more specific standards of SAFEbuilt performance are included within **Exhibit C**.
- 5.2 In a timely manner, SAFEbuilt shall inform the Director of Public Safety of all oral complaints and submit a copy of all written complaints it receives from third parties against any employee, contractor, subcontractor or independent contractor of SAFEbuilt to the Director of Public Safety. The Director of Public Safety shall determine the disposition of all written complaints.
- 5.3 The Parties mutually agree that SAFEbuilt's actions reflect on the reputation of the City. It is imperative to the City that SAFEbuilt treats the City and the public with the utmost fairness and respect. SAFEbuilt shall strictly comply with all the terms and conditions set out in this Agreement.

6.0 LEASING OF CITY PROPERTY - OFFICE SPACE

6.1 The City of Muskegon and SAFEbuilt shall execute and adhere to the obligations of a rental lease as outlined in **Exhibit D**.

7.0 USE OF CITY SOFTWARE

7.1 The City is licensed to use BS&A software for its Building Department permit programs. The City has obtained permission from BS&A to allow SAFEbuilt to have access to the City's BS&A software as long as that software is only used by SAFEbuilt to perform the services under this Agreement for the City. SAFEbuilt acknowledges that the license to use the BS&A software terminates with the termination of this Agreement.

7.1.1 All Code Enforcement Case identification numbers; Rental Program Identification numbers; will incorporate a prefix that signifies case or registration was generated under this Agreement.

7.2 SAFEbuilt shall provide an original signed statement from each of its employees acknowledging that he/she understands that the BS&A software is the sole property of BS&A and at no time may he/she download, copy, alter, or take other prohibited actions regarding that software. SAFEbuilt is permitted to use standard City software loaded on the City's computers leased under Section 7, for example, Microsoft Office and Outlook email. SAFEbuilt's right to use the software applies only to work performed for the City and any rights to the use of that software ceased upon their termination by SAFEbuilt and/or the termination of the Agreement.

7.3 SAFEbuilt agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees, and volunteers against any claims, demands, suits or loss, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees or volunteers by reason of any allegation of illegal use or misuse of BS&A software or a violation of the licensing agreement by SAFEbuilt.

8.0 TERM AND TERMINATION

8.1 Term. This Agreement shall be effective on the December 01, 2016, (the "Effective Date") and shall terminate on December 31, 2024. At the end of this period, and upon mutual agreement of the parties as approved by City Commission, this Agreement may be renewed for up to a two (2) year period. This Agreement may also be terminated as provided in paragraph 9.3.

8.2 Continuing Services Required. SAFEbuilt shall perform the Services in accordance with this Agreement commencing on the Effective Date until such Services are terminated or suspended in accordance with this Agreement. SAFEbuilt shall not temporarily delay, postpone, or suspend the performance of the Services without the written consent of the City Commission, City Manager, or a person expressly authorized in writing to direct SAFEbuilt's services.

8.3 City Unilateral Termination. Notwithstanding paragraph 13, this Agreement may be terminated by the City for any or no reason upon written notice delivered to SAFEbuilt at least ninety (90) days prior to termination. In the event of the City's exercise of the right of unilateral termination as provided by this paragraph:

8.3.1 Unless directed to continue performing work during the ninety (90) day period prior to termination or unless otherwise provided in any notice of termination, SAFEbuilt shall provide no further services in connection with this Agreement after receipt of a notice of termination; and

8.3.2 All finished or unfinished documents, data, studies and reports prepared by SAFEbuilt pursuant to this Agreement shall be delivered by SAFEbuilt to the City and shall become the property of the City; and

8.3.3 SAFEbuilt shall retain any building fees collected, regardless of service performed, through last day worked based on termination notice. SAFEbuilt will provide a final accounting within thirty (30) days of the date of termination unless directed otherwise.

8.4 Termination for Non-Performance. Should a Party to this Agreement fail to materially perform in accordance with the terms and conditions of this Agreement, this Agreement may be terminated by the performing Party if the performing Party first provides written notice to the non-performing Party which notice shall specify the non-performance, provide both a demand to cure the non-performance and reasonable time to cure the non-performance, and state a date upon which the Agreement shall be terminated if there is a failure to timely cure the non-performance. For purpose of this Section 8.4, "reasonable time" shall be not less than five (5) business days. In the event of a failure to timely cure a non-performance and upon the date of the resulting termination for nonperformance, SAFEbuilt shall prepare a final accounting and final invoice of charges for all performed but unpaid Services and authorized reimbursable expenses. Such final accounting and final invoice shall be delivered to the City within fifteen (15) days of the date of termination; thereafter, no other invoice, bill, or other form of statement of charges owing to SAFEbuilt shall be submitted to or accepted by the City. Provided that notice of non-performance is provided in accordance with this Section 8.4, nothing in this Section 8 shall prevent, preclude, or limit any claim or action for default or breach of contract resulting from non-performance by a Party.

8.5 Unilateral Suspension of Services. The City may suspend SAFEbuilt's performance of the Services at the City's discretion and for any reason by delivery of written notice of suspension to SAFEbuilt which notice shall state a specific date of suspension. Upon receipt of such notice of suspension, Safe Built shall immediately cease performance of the Services on the date of suspension except: (1) as may be specifically authorized by the notice of suspension (e.g., to secure the work area from damage due to weather or to complete a specific report or study); or (2) for the submission of an invoice for Services performed prior to the date of suspension in accordance with this Agreement.

8.6 Reinstatement of Services Following City's Unilateral Suspension. The City may at its discretion direct SAFEbuilt to continue performance of the Services following suspension. If such direction by the City is made within (30) days of the date of suspension, SAFEbuilt shall recommence performance of the Services in accordance with this Agreement. If such direction to recommence suspended Services is made more than thirty-one (31) days following the date of suspension, SAFEbuilt may elect to: (1) provide written notice to the City that such suspension is considered a unilateral termination of this Agreement pursuant to Section 9.3; or (2) recommence performance in accordance with this Agreement; or (3) if suspension exceeded sixty (60) consecutive days, request from the City an equitable adjustment in compensation or a reasonable re-start fee and, if such request is rejected by the City, to provide written notice to the City that such suspension and rejection of additional compensation is considered a unilateral termination of this Agreement pursuant to Section 9.3. Nothing in this Agreement shall preclude the Parties from executing a written amendment or agreement to suspend the Services upon terms and conditions mutually acceptable to the Parties for any period.

8.7 Delivery of Notice of Termination. Any notice of termination permitted by this Section 8 and its subsections shall be deemed given as set out in Section 14.13 of this Agreement titled "Notices".

9.0 INSURANCE

9.1 Insurance Generally. SAFEbuilt shall obtain and shall continuously maintain during the term of this Agreement insurance of the kind and in the amounts specified as follows:

☒ The Contactor shall secure and maintain the following ("Required Insurance"):

☒ Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of one hundred thousand dollars (\$100,000) each accident, five hundred thousand

dollar (\$500,000) disease - policy limit, and one hundred thousand dollars (\$100,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

☒ Commercial general liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Corporations, an Annual Contract Aggregate Limit endorsement, and products and completed operations. The policy shall contain a severability of interest provision, and shall be endorsed to include the Municipality including Architects and Engineers, all elected and appointed officials, all employees and volunteers, boards, commissions and/or authorities and their board members, employees, and volunteers as additional insured. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

☒ Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than of One Million Dollars (\$1,000,000.00) each occurrence with respect to each of SAFEbuilt's owned, hired and non-owned vehicles assigned to or used in performance of the Services. The policy shall contain a severability of interest's provision. Such insurance coverage must extend to all levels of subcontractors. Such coverage must include all automotive equipment used in the performance of the Agreement, both on the work site and off the work site, and such coverage shall include non-ownership and hired cars coverage. Such insurance shall be endorsed to name the City as Certificate Holder and name the City, and its elected officials, officers, employees and agents as additional insured parties.

☒ Professional Liability (errors and omissions) Insurance with a minimum limit of coverage of One Million Dollars (\$1,000,000) per claim and annual aggregate. Such policy of insurance shall be obtained and maintained for one (1) year following completion of all Services under this Agreement. Such policy of insurance shall be endorsed to include the City as a Certificate Holder.

The Required Insurance shall be procured and maintained with insurers licensed and admitted in Michigan with an A- or better rating as determined by Best's Key Rating Guide. All Required Insurance shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by SAFEbuilt.

9.2 Additional Requirements for All Policies. In addition to specific requirements imposed on insurance by this Section 9 and its subsections, insurance shall conform to all of the following:

- 9.2.1 Insurance carried or obtained by the City, its officers, or its employees shall be in excess of and not contributory insurance to that provided by SAFEbuilt; provided, however, that the City shall not be obligated to obtain or maintain any insurance whatsoever for any claim, damage, or purpose arising from or related to this Agreement and the Services. SAFEbuilt shall not be an insured party for any City-obtained insurance policy or coverage.
- 9.2.2 SAFEbuilt shall be solely responsible for any deductible losses for Required Insurance.
- 9.2.3 No policy of insurance shall contain any exclusion for bodily injury or property damage arising from completed operations.
- 9.2.4 Every policy of insurance shall provide that the City will receive notice no less than thirty (30) days prior to any cancellation, termination, or a material change in such policy.

9.3 Failure to Obtain or Maintain Insurance. SAFEbuilt's failure to obtain and continuously maintain policies of insurance in accordance with this Section 9 and its subsections shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of SAFEbuilt arising from

performance or non-performance of this Agreement. Failure on the part of SAFEbuilt to obtain and to continuously maintain policies providing the required coverage, conditions, restrictions, notices, and minimum limits shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or, at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by SAFEbuilt to the City immediately upon demand by the City, or at the City's sole discretion, the City may offset the cost of the premiums against any monies due to SAFEbuilt from the City pursuant to this Agreement.

9.4 Insurance Certificates. Prior to commencement of the Services, SAFEbuilt shall submit to the City certificates of insurance for all Required Insurance. Insurance limits, term of insurance, insured parties, and other information sufficient to demonstrate conformance with this Section 10 and its subsections shall be indicated on each certificate of insurance. Certificates of insurance shall reference SAFEbuilt / Building Inspection Services. The City may request and SAFEbuilt shall provide within ten (10) business days of such request a current certified copy of any policy of Required Insurance and any endorsement of such policy. The City may, at its election, withhold payment for Services until the requested insurance policies are received and found to be in accordance with the Agreement.

10.0 OWNERSHIP OF DOCUMENTS

10.1 Any work product, materials, and documents produced by SAFEbuilt pursuant to this Agreement shall be and remains property of the City and shall not be made subject to any copyright unless authorized by the City. SAFEbuilt hereby assigns to the City the copyright to all works prepared, developed, or created pursuant to the Services outlined in this Agreement, including the rights to: (1) reproduce the work; (2) prepare derivative works; (3) distribute copies to the public by sale, rental, lease, or lending; (4) perform the works publicly; and (5) to display the work publicly. SAFEbuilt waives its rights to claim authorship of the works, to prevent its name from being used in connection with the works, and to prevent distortion of the works.

Other materials, methodology and proprietary work used or provided by SAFEbuilt to the City not specifically created and delivered pursuant to the Services outlined in this Agreement may be protected by a copyright held by SAFEbuilt and SAFEbuilt reserves all rights granted to it by any copyright. The City shall not reproduce, sell, or otherwise make copies of any copyrighted material, subject to the following exceptions: (1) for exclusive use internally by City staff and/or employees; or (2) pursuant to a request under the Michigan Freedom of Information Act, MCL 15.231 et. seq., or any Federal open records act, to the extent that such statutes apply; or (3) pursuant to law, regulation, or court order. SAFEbuilt waives any right to prevent its name from being used in connection with the Services.

10.2 SAFEbuilt will be provided with a copy of the City's Freedom of Information Act ("FOIA") policy. The City is responsible for responses to FOIA requests and SAFEbuilt shall not directly respond to any third parties regarding any received FOIA requests. Upon receipt of a FOIA request, SAFEbuilt shall immediately give that request to the City Clerk. SAFEbuilt shall provide specific information requested by the City for response to the FOIA request by the date and time requested by the City Clerk and in a specific format if so requested by the City Clerk, excluding those documents prepared by or on behalf of the City.

10.3 If SAFEbuilt receives a claim for damages, a Summons or Complaint, a subpoena or other document concerning a request for money damages, a threat of a law suit, or any court action proceeding, SAFEbuilt shall immediately hand deliver these documents to the City Clerk.

11.0 INDEPENDENT CONTRACTOR.

11.1 SAFEbuilt shall perform the Services as an independent contractor and shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other

relationship with the City other than as a contracting party and independent contractor. City and SAFEbuilt agree to jointly hire the City's Building Official. Although jointly employed, City and SAFEbuilt agree City has no obligation to compensate the Building official in any way and that all compensation, fringe benefits, including retirement programs and insurance, shall be provided by SAFEbuilt. The Building Official shall report to the Director of Public Safety, but SAFEbuilt shall be fully responsible for training, overseeing, and managing the Building Official. The City shall not be obligated to secure, and shall not provide, any insurance coverage or employment benefits of any kind or type to or for SAFEbuilt or SAFEbuilt's employees, sub-consultants, contractors, agents, or representatives, including coverage or benefits related but not limited to: local, state, or federal income or other tax contributions; insurance contributions (e.g., FICA); workers' compensation; disability, injury, or health; professional liability insurance, errors and omissions insurance; or retirement account contributions.

12.0 CONFLICT OF INTEREST

- 12.1 SAFEbuilt shall refrain from providing services to other persons, firms, or entities that would create a conflict of interest for SAFEbuilt with regard to providing the Services pursuant to this Agreement. SAFEbuilt shall not offer or provide anything of benefit to any City official or employee that would place the official or employee in a position of violating the public trust as provided under the City Charter, City Code of Ordinance, state or federal statute, case law or ethical principles.

13.0 REMEDIES

- 13.1 In addition to any other remedies provided for in this Agreement, and without limiting its remedies available at law, the City may exercise the following remedial actions if SAFEbuilt substantially fails to perform the duties and obligations of this Agreement. Substantial failure to perform the duties and obligations of this Agreement shall mean a significant, insufficient, incorrect, or improper performance, activities or inactions by SAFEbuilt. The remedial actions include:

- 13.1.1 Suspend SAFEbuilt's performance pending necessary corrective action as specified by the City without SAFEbuilt's entitlement to an adjustment in any charge, fee, rate, price, cost, or schedule; and/or
- 13.1.2 Withhold payment to SAFEbuilt until the necessary services or corrections in performance are satisfactorily completed; and/or
- 13.1.3 Deny payment for those services which have not been satisfactorily performed, and which, due to circumstances caused by SAFEbuilt, cannot be performed, or if performed would be of no value to the City; and/or
- 13.1.4 Terminate this Agreement in accordance with this Agreement.

The foregoing remedies are cumulative and the City, in its sole discretion, may exercise any or all of the remedies individually or simultaneously.

14.0 MISCELLANEOUS PROVISIONS

- 14.1 No Waiver of Rights. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or continued breach by either Party or continued breach by either Party. The City's approval or acceptance of, or payment for, services shall not be construed to operate as a waiver of any rights or benefits to be provided under this Agreement. No covenant or term of this Agreement shall be deemed to be waived by the City except in writing signed by the City Commission or by a person expressly authorized to sign such waiver by resolution of the City Commission of the City and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

- 14.2 No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, volunteers or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Michigan Governmental Immunity Act, MCL 691.1401, et. seq.
- 14.3 Affirmative Action. SAFEbuilt will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. SAFEbuilt will take affirmative action to ensure applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 14.4 Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns.
- 14.5 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, Sub-consultant or subcontractor of SAFEbuilt. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 14.6 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Michigan. Venue for any action arising under this Agreement shall be in the County of Muskegon. If there is any conflict between the language of this Agreement and any exhibit or attachment, the language of this Agreement shall govern.
- 14.7 Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.
- 14.8 No Assignment. Neither Party shall assign all or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement to another party or entity.
- 14.9 Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- 14.10 Integration and Amendment. This Agreement represents the entire and integrated agreement between the City and SAFEbuilt and supersedes all prior negotiations, representations, or agreements, either written or oral, unless specified herein. Any amendments to this must be in writing and be signed by both the City and SAFEbuilt.
- 14.11 Severability. Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.
- 14.12 Incorporation of Exhibits. Unless otherwise stated in this Agreement, exhibits, applications, or documents referenced in this Agreement shall be incorporated into this Agreement for all purposes. In the event of a conflict between any incorporated exhibit and this Agreement, the provisions of this Agreement shall govern and control.

14.13 Notices. Unless otherwise specifically required by a provision of this Agreement any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth below or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States Mail properly addressed to the intended recipient.

If to the City:	If to SAFEbuilt:
Director of Public Safety City of Muskegon PO Box 536 / 933 Terrance Street Muskegon, MI 49440	Gregory Toth, President SAFEbuilt Corporate Offices 3755 Precision Drive, Suite 140 Loveland, CO 80538
With Copy to:	With Copy to:
John C. Schrier Parmenter O'Toole Attorneys at Law 601 Terrace Street Muskegon, MI 49440	Rick Kessler SAFEbuilt Michigan, LLC 426 East Lincoln Avenue Royal Oak, MI 48067

15.0 SPECIAL PROVISIONS

15.1 Indemnification and Hold Harmless. To the fullest extent permitted by law, SAFEbuilt agrees to defend, pay on behalf of, indemnify, and hold harmless the City its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof which arises out of or is in any way connected or associated with this Agreement. At no time does the City waive its right to governmental immunity.

15.2 Force Majeure. Neither SAFEbuilt nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

15.3 Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of City and SAFEbuilt and bind their respective entities.

THIS AGREEMENT is executed and made effective as provided above.

City of Muskegon, MI

SAFEbuilt Michigan, LLC

Signature _____

Signature _____

Name: _____

Name: _____

Title: _____

Date: ____/____/____

Title: _____

Date: ____/____/____

ATTEST Signature

Name / Title

Date: ____/____/____

EXHIBIT A: Scope of Services

Customer Service Complaint Mitigation Plan

SAFEbuilt will develop a plan to deal with customer service complaints and will provide that plan to the City by the end of 2016. Plan will likely include comment cards, office complaint form and customer service training. SAFEbuilt will provide updates to the City on a quarterly basis.

Administrative Services

- ✓ Provide onsite administrative staff
- ✓ Provide permit counter intake during City Hall business hours of 8:30 a.m. to 5:00 p.m.
- ✓ Inform applicant when submitting plans of what the maximum amount of time it will be to first comments and also the estimated time to first comments and/or completion
- ✓ Answer all questions at the counter or over the phone and provide ongoing communication as needed
- ✓ Review and provide handouts at the counter
- ✓ Administer the City of Muskegon contractor registration program
- ✓ Provide input, tracking, and reporting using the City's current system (BS&A)
- ✓ All Code Enforcement case identification numbers; Rental Program identification numbers will incorporate a prefix that signifies case or registration was generated under this Agreement.
- ✓ Implement performance measurements to ensure agreed upon service levels
- ✓ Provide scheduling support to inspection staff
- ✓ Prepare reports within mutually agreed upon timeframes and frequencies
- ✓ Follow up on complaints and provide resolution
- ✓ Provide emergency disaster response as it relates to building code – available via cell phone after hours
- ✓ Attend required staff level meeting with City staff, public officials, community leaders, and the public
- ✓ Submit monthly activity and compliance reports to the Director of Public Safety

Building Department Services

- ✓ Monitor and enforce adopted building codes, related codes, and amendments
- ✓ Demonstrate experience and applied knowledge in the aspects of plan review and building and construction inspections related to historic structures
- ✓ Document areas of non-compliance using written records, electronic communications, photographs or other appropriate means
- ✓ Provide training for our inspectors on City of Muskegon ordinances and amendments
- ✓ Manage and pay for CEU training required to maintain Act 54 compliance
- ✓ Be available for meetings as requested – including representing the City at HBA meetings as needed
- ✓ Work in partnership with the City of Muskegon staff to pursue the City providing building code compliance and consulting services to the local school districts, local community colleges and local colleges as allowed by all applicable regulations
- ✓ Work with the City Clerk to facilitate Freedom of Information Act (FOIA) requests
- ✓ Report directly to the position of Director of Public Safety

Existing Open Permits

SAFEbuilt will report on the number of open permits quarterly, providing assurance that the City is covered for open permits.

Plan Review Services

- ✓ Accept and perform plan review
- ✓ Work with the applicant on submittal requirements in order to ensure the process is not held up for minor issues
- ✓ Examine all commercial and residential projects including drawings, specifications, computations, and additional data
- ✓ Determine if plans conform to the required strengths, stresses, strains, loads, and stability of adopted building codes, local amendments, and all other pertinent laws and ordinances
- ✓ Perform the following reviews: building code, accessibility, mechanical, electrical, plumbing, use and occupancy classification, general building heights and areas, construction type, means of egress, accessibility, energy code, and foundation

- ✓ Be available for pre-submittal meetings in order to help facilitate the timeliness of reviews and the completeness of submittals
- ✓ Coordinate plan review tracking, reporting, and interaction with applicable departments
- ✓ Add resources as needed to keep reviews on schedule and provide needed expertise
- ✓ Review all revisions and be available for consultation after review is completed

Inspection Services

- ✓ Coordinate all inspection requests
- ✓ Offer the option of having the inspection performed in the morning or the afternoon – am/pm inspections
- ✓ Perform inspections of residential and nonresidential buildings to determine that construction activity complies with approved plans, applicable codes and ordinances
- ✓ Perform all inspections as per adopted building codes and local amendments including liquor license inspections and coordination with Fire Marshall as warranted
- ✓ Provide onsite inspection consultations to citizens and contractors at an hourly rate, if determined by Building Official
- ✓ Observe safety and security procedures and report potentially unsafe conditions
- ✓ Identify and document any areas of non-compliance and suggest alternate means
- ✓ Notify appropriate jurisdiction staff when we observe code violations
- ✓ Perform work associated with abatement of dangerous buildings as allowed by adopted ordinance and state law
- ✓ Process and deliver stop-work notices for non-conforming building activities – as approved by the Building Official
- ✓ Leave a copy of the inspection notice with appropriate site personnel – as approved by the Bldg. Official

Administrative Support/Permit Technician Services

- ✓ Provide a qualified team member to facilitate the permitting process from initial permit intake to final issuance of permit
- ✓ Provide a qualified team member to facilitate administration of the City's dangerous building, rental and code enforcement programs
- ✓ Determine and collect fees if desired by the City of Muskegon
- ✓ Provide inspection scheduling and tracking to ensure code compliance
- ✓ Provide customer service
- ✓ Process permits that require minimal or no plan review at time of submittal as approved by the Building Official
- ✓ Respond to citizen complaints and communicate effectively with citizens to minimize impact of building activities on the public and neighborhoods

Dangerous Building Program

- ✓ City will adopt the International Property Maintenance Code by January 31, 2017
- ✓ SAFEbuilt shall provide notices to property owners in compliance with the International Property Maintenance Code
- ✓ SAFEbuilt is responsible to follow through with all steps in the declaring and the demolition of dangerous buildings, including coordination with demolition contractors
- ✓ SAFEbuilt will facilitate and prepare for Housing Board of Appeals (HBA) meetings
- ✓ SAFEbuilt will prepare all City Commission agenda items and attend City Commission meetings
- ✓ SAFEbuilt will provide any reporting data required to obtain grants related to demolitions. The City is responsible for obtaining and managing any grants from the State or County.
- ✓ SAFEbuilt will attempt to issue and collect on all tickets (Ex B #8) and demolition fees (Ex B #5) from the property owner(s) per the method outlined in **Exhibit B**

Rental Program Services

- ✓ Monitor and enforce applicable City adopted ordinances
- ✓ International Property Maintenance Code will be enforced
- ✓ Act as an educator of ordinances and regulations as adopted or amended, so that citizens and businesses understand requirements and time frames for becoming compliant
- ✓ Document areas of non-compliance using written records, electronic communications, photographs or other appropriate means

- ✓ Prepare and maintain all materials for any court action in a form approved by the court, City ordinance, and State statute
- ✓ Attend court sessions – as required
- ✓ Prepare and maintain all reports, issue citations and other documents for action
- ✓ Prepare and distribute invoicing with regards to rental to citizens and/or owners
- ✓ Provide training for our inspectors on City of Muskegon ordinances and amendments
- ✓ Observe safety and security procedures and report potentially unsafe conditions
- ✓ Provide rental inspections as mutually scheduled with tenant and/or owner and provide follow-up as required
- ✓ Contact and inform owners of identified violations and compliance deadlines

A new Rental Registration Program will be implemented to inspect properties on a two, four or six year program based on the condition of the property. The City reserves the right to approve the final plan prior to formal implementation.

Code Enforcement Services

- ✓ Code enforcement focus will be “grass, trash, and leaves”
- ✓ Patrol to identify violations of City code, especially focused on violations such as overgrown vegetation; trash and debris; grass and terrace violations
- ✓ Act as an educator of ordinances and regulations as adopted or amended, so that citizens and businesses understand requirements and time frames for becoming compliant
- ✓ Monitor and enforce applicable City adopted ordinances and International Property Maintenance Code.
- ✓ Responds to and investigate code violation complaints promptly and provide follow-up as required
- ✓ Respond to and investigate terrace violations promptly and provide next day follow-up
- ✓ Contact and inform owners of identified violations and compliance deadlines
- ✓ Document areas of non-compliance using written records, electronic communications, photographs or other appropriate means
- ✓ Prepare and maintain all materials for any court action in a form approved by the court, City ordinance and State statute
- ✓ Attend required court cases
- ✓ Issue citations, violation notices, and follow-up letters on violations of applicable City ordinances and International Property Maintenance Code
- ✓ Observe safety and security procedures and report potentially unsafe conditions
- ✓ Notify appropriate staff when we observe vacant/dangerous buildings
- ✓ Administer code violations like tall grass and weeds
- ✓ Cleanup of lots on privately owned property
- ✓ Issue work order to contractors
- ✓ Search for and find violations
- ✓ Invoice property owners
- ✓ Oversee appeals and issue citations as needed
- ✓ Review photographic evidence
- ✓ Submit unpaid bills for collection
- ✓ Manage cutting and cleanup of City, County or State owned lots
- ✓ Manage collections for unpaid fees paid by the City for cutting and cleanup of private property; unpaid fees will be submitted for collection and facilitated by SAFEbuilt (no split, City retains all CE fees after submittal for collections)

Municipal Civil Infractions (MCI) Collection Services

- ✓ Administer the MCI collections program for citations issued by SAFEbuilt on behalf of the City
 - SAFEbuilt issues citations for Building, Rental and Code Enforcement Departments only
- ✓ Collect and document unpaid MCI's for submittal to a collection agency designated by the City
 - Citation documentation will be submitted electronically to the collection agency
 - Collection agency will submit payment payable to the City and to be sent to SAFEbuilt office, documented and split 50/50 on monthly invoicing
 - Citation documentation will be submitted for collection a minimum of once per quarter and a maximum of once per month

SAFEbuilt Provides

SAFEbuilt would propose leasing office space from the City of Muskegon and will provide:

- ✓ Vehicles, vehicle maintenance, and insurance
- ✓ All hiring expenses
- ✓ Ongoing training and certification of employees
- ✓ Office computer hardware
- ✓ Cell phones and usage

City Provided Location & Equipment

City of Muskegon will:

- ✓ Provide Room 201 (currently be occupied by CNS) for lease to SAFEbuilt (to be available for renovation by Jan. 30, 2017) at the rate of \$1200 per month, subject to a 3% increase January 01, 2018 and annually thereafter. This lease rate includes all utilities.
- ✓ SAFEbuilt may deduct up to \$40,000 in building improvements for Room 201 only from their monthly rent, which could result in 2 – 3 years rent free. Improvements may include new carpet, floor tile, paint, reception desk, office partitions and wall modifications.
- ✓ Allow SAFEbuilt to service other W. Michigan communities from the leased space within City Hall
- ✓ Absorb costs associated with the electronic storage of department permit and inspection records – SAFEbuilt will facilitate the conversion and storage process with City Clerk

City Obligations/Provisions

- ✓ City shall discontinue the practice of charging SAFEbuilt for postage, copy machine rent, phone rent, and information technology services.
- ✓ City shall permit SAFEbuilt to use its telephone and internet service through the City's service provider. City retains the rights to continue with current telephone/internet provider or switch provider with thirty (30) day notice to SAFEbuilt.
- ✓ City shall maintain and staff its vacant building program; including board-ups
- ✓ City shall update and increase City fee schedule for building permit, plan review, and rental fees per mutual agreement of both Parties.
- ✓ City shall implement a "Certificate of Occupancy" charge on all building permits requiring a Certificate of Occupancy. The City shall keep 100% of the funds collected.
- ✓ City shall adopt the International Property Maintenance Code by January 31, 2017.
- ✓ City is responsible for obtaining and managing any grants from the State or County,
- ✓ City shall provide SAFEbuilt access to water billing records and assessors data in order to help find unregistered rental properties
- ✓ City shall supply property map on CD that can be installed on any computer or laptop.
- ✓ City shall continue to supply property map in the printed book format for those without a laptop
- ✓ City shall pay for newspaper advertising for code enforcement related issues or seek an alternate program for advertising like Facebook or the City website.
- ✓ City shall supply paper and envelopes as needed.
- ✓ City shall pay all code enforcement contractor invoices, including the current contractor of SAFEbuilt's choice, Muskegon County Landfill and current tire disposal contractor of SAFEbuilt's choice.

EXHIBIT B: Fee Schedule

SAFEbuilt does not utilize a company-wide fee schedule. A majority of our fees are based on an appropriate percentage of the jurisdictions adopted fee schedule for services being provided by SAFEbuilt. SAFEbuilt proposes services to be performed at the following rates. SAFEbuilt's fees are all inclusive with no separate billing for:

- Wages/Benefits
- Mileage/Vehicle Expense
- Materials
- Disbursement (copying, telephone rates, courier services)

Fee Schedule

1. Building Department Related Fees – 82% of all adopted building department fees
Except the following:
 - Rental property and associated fees
 - Certificate of Occupancy Fees
2. Liquor License Inspection & Re-Inspection Fees – 82% of fee
3. Hourly Rate Fee - \$70.00 (see Section 3.3)
4. Postage Fee - \$10,000 maximum annual allowance
5. Dangerous Building Fees
SAFEbuilt will attempt to issue and collect on all tickets and demolition fees from the property owner(s) as follows:
 - When the City pays for a demolition a 20% Administrative Fee shall be applied to the demolition costs charged to the property owner(s) – Administrative Fee shall be returned to the City after recovery
 - SAFEbuilt shall keep 30% of any demolition cost recovered prior to sending items to collections excluding the Administrative Fee
 - City and SAFEbuilt will share the net after collections 50/50 unless otherwise provided
 - Title Search fees shall be paid by the City – if required
 - City shall be responsible for collecting any escrow funds
6. Rental Program Fee Schedule – City shall pay SAFEbuilt \$25,000 per month for the administration of the Rental Program beginning December 01, 2016.
 - A 3% inflator will be implemented January 01, 2018 and every January 1st thereafter through December 31, 2020
 - A rate-opener will be held to determine the rate for years beginning January 01, 2021 and thereafter
 - Rental Program Revenue Sharing shall be a 50/50 split for all revenue in excess of \$300,000 annually, City shall keep first \$300,000 in revenue
7. Code Enforcement Program Fee Schedule – City shall pay SAFEbuilt \$13,150 per month for the administration of the code enforcement program beginning December 01, 2016.
 - A 3% inflator will be implemented January 01, 2018 and every January 1st thereafter through December 31, 2020
 - A rate-opener will be held to determine the rate for years beginning January 01, 2021 and thereafter
 - Manage cutting and cleanup of City, County or State owned parcels for a \$10 fee per work order

- Code Administrative Fees for private lot cleanup that are paid without being submitted to collections will be retained by SAFEbuilt; fees that are submitted for collection will become part of the collections for the City
8. Municipal Civil Infractions (MCI) Fee – SAFEbuilt and the City shall receive a 50/50 split of recovered fees (after going to collection)

EXHIBIT C: Performance Standards

We use a number of performance measures to gauge the effectiveness of our systems and the efficiency of our staff. The most visible of quantitative measures are the following:

Area	Performance Measurement	Goal	Comments
Overall Department	Customer Service Ratings	100% satisfaction	SAFEbuilt will utilize customer service surveys to determine if department activity is satisfactory for the end user and to identify areas of strengths and areas that need improvement.
Administrative Support	Percentage of walk-ins experiencing counter wait times of less than 10 minutes	100%	A front counter log will be reviewed each month to ensure that any customer requests or issues are handled quickly and effectively so as not to be an inconvenience. The data will be compiled into a report.
Administrative Support	Percentage of phone inquiries/information requests/complaints handled within 24 hours	100%	Inquiries and complaints from walk-in traffic, emails and phone calls will be tracked and compiled into a report.
Plan Review	Residential (IRC) plan reviews – maximum time to first comment is 5 business days.	100%	City of Muskegon permit software should capture this information. If not, SAFEbuilt will utilize its proprietary software to provide reporting. The 5 business day's time frame is a maximum time to comments. All plans will be reviewed on an As Soon As Possible (ASAP) basis. Estimated time to completion will be communicated to applicant.
Plan Review	Multi-family plan reviews maximum time to first comments is 10 business days. Maximum time to second comments is 5 business days	100%	City of Muskegon permit software should capture this information. If not, SAFEbuilt will utilize its proprietary software to provide reporting. The 10 and 5 business day's time frames are a maximum time to comments. All plans will be reviewed on an As Soon As Possible (ASAP) basis. Estimated time to completion will be communicated to applicant.
Plan Review	Small Commercial (<\$5M in valuation) plan reviews first comments within 10 business days/second comments 5 business days	100%	City of Muskegon permit software should capture this information. If not, SAFEbuilt will utilize its proprietary software to provide reporting. The 10 and 5 business day's time frames are a maximum time to comments. All plans will be reviewed on an As Soon As Possible (ASAP) basis. Estimated time to completion will be communicated to applicant.
Plan Review	Large Commercial (>\$5M in valuation) plan reviews first comments within 15 business days/second comments 10 business days	100%	City of Muskegon permit software should capture this information. If not, SAFEbuilt will utilize its proprietary software to provide reporting. The 15 and 10 business day's time frames are a maximum time to comments. All plans will be reviewed on an As Soon As Possible (ASAP) basis. Estimated time to completion will be communicated to applicant.
Building and Trade Inspections	All inspections performed within 24 hours of request unless otherwise requested by applicant	100%	City of Muskegon permit software should capture this information. If not, SAFEbuilt will utilize its proprietary software to provide reporting. The maximum time to complete a scheduled inspection is 24 hours – this does not include non business days or City holidays.

EXHIBIT D: Lease Agreement

CITY OF MUSKEGON

Landlord

TO

SAFEbuilt Michigan, LLC

Tenant

LEASE

Dated: December 01, 2016

**Premises in the City Hall Building
City of Muskegon
County of Muskegon
State of Michigan**

Room 201

LEASE

THIS LEASE, made November 01, 2012, between the City of Muskegon, a Michigan municipality ("Landlord" or "the City") of 933 Terrace Street, Muskegon, Michigan, 49440, and SAFEbuilt Michigan, LLC, ("Tenant");

ARTICLE I DEFINITIONS

1.01 DEFINITIONS: As used herein the following terms and phrases shall have the meanings indicated:

- A. Commencement Date: December 01, 2016
- B. Term: The period of December 01, 2016 through December 31, 2024 ending at midnight of the last day. At the end of this period, and upon mutual agreement of the parties as approved by City Commission, this Lease may be renewed for up to a two (2) year period.
- C. Rent Commencement Date: December 01, 2016
- D. Demised Premises: Room 201, which is approx. 2736 square feet of office space, located on the second floor within the building containing the City of Muskegon's City Hall at 933 Terrace Street, Muskegon, Michigan, 49440.
- E. Common Areas: All areas, spaces and improvements which Landlord makes available from time to time for the common use and benefit of Tenant, including, without limitation, customer parking spaces, roads, walkways, promenades, sidewalks, landscaped and planted areas, public rest rooms, and those portions of utility and sewer lines and systems and fire protection and sprinkler alarm systems serving the common use and benefit of Tenant.
- F. Landlord: The City of Muskegon, the owner of the fee of the Demised Premises.
- G. Requirements: All laws, statutes, ordinances (including, but not limited to, building codes and zoning regulations and ordinances), orders, rules, regulations and requirements of all federal, state, county and municipal governments, and the appropriate agencies, officers, departments, boards and commissions thereof, and the board of fire underwriters and/or the fire insurance rating organization or similar organization performing the same or similar functions, whether now or hereafter in force, applicable to the Building or any part thereof and/or the Demised Premises or the use or manner of use of the Building or any part thereof and/or the Demised Premises or the sidewalks and curbs adjacent thereto.
- H. The Building: The structure located at 933 Terrace Street, in which the Demised Premises are located and in which City of Muskegon City Hall is located.

ARTICLE II

DEMISE AND CONSTRUCTION

2.01 DEMISE. Upon and subject to the terms and conditions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, the Demised Premises, for the Term. Tenant acknowledges that the dimensions, shape and location of the Demised Premises as described herein are approximate. Notwithstanding the foregoing, Landlord reserves exclusively to itself and Tenant shall have no right in and to (a) the use of the exterior faces of all perimeter walls, (b) the use of the roof, (c) the use of the land, improvements and space below the bottom of the lower floor slabs of the Demised Premises and above the interior surface of the ceiling of the Demised Premises, and (d) the use of the improvements and space above the highest ceiling of the Demised Premises. Landlord also reserves and Tenant shall have no right in and to the air rights above Tenant's office space.

2.03 FURNITURE. Landlord shall provide any cubicle dividers, desks, file cabinets, shelves, tables, floor mates, and/or wall document holders that are existing in the Demised Premises on the Commencement Date. The use of the existing property shall be included in the Fixed Rent and be included as part of the Demised Premises.

2.04 ACCEPTANCE OF DEMISED PREMISES. Tenant's occupancy of Room 201 shall be conclusive evidence against Tenant as an admission that every part of the Demised Premises is accepted "as is". Room 201 shall be cleared of all City belongings including books, old office equipment and 4-drawer file cabinets (with the exception of all desks and wall panels) by January 30, 2017. This is to include the current supply/print storage room, all prints and related material should be removed and properly archived by the City Clerk. Landlord shall have no responsibility in any respect for damages to property of Tenant caused by water, flooding, waves or fluids of any nature or origin whatsoever. Tenant hereby waives any and all benefits or rights to which Tenant might become entitled by reason of any and all provisions of law that permit a tenant to make repairs at the expense of a landlord or to terminate a lease by reason of the condition of the Demised Premises.

ARTICLE III FIXED RENT AND SECURITY

3.01 PAYMENT OF FIXED RENT. Commencing upon the Rent Commencement Date, Tenant shall pay rent at the monthly rate of \$1200.00, in advance of the first day of each month during the Term, except that if the Rent Commencement Date is not the first day of a month, Fixed Rent for the period commencing on the Rent Commencement Date and ending on the last day of the month in which the Rent Commencement Date occurs shall be apportioned on the basis of the number of days in said month as compared to 365 days and paid on the Rent Commencement Date. The Fixed Rent shall be paid promptly when due, in lawful money of the United States, without notice or demand and without deduction, abatement, counterclaim or setoff of any amount or for any reason whatsoever, to Landlord at the address of Landlord set forth at the head of this Lease or such other address as Landlord may designate or to such other person as Landlord may designate. Tenant rent shall be subject to a 3% increase January 01, 2018 and annually thereafter.

SAFEbuilt will occupy Room 201. SAFEbuilt may deduct up to \$40,000 in building improvements from their monthly rent which is approx. 2 – 3 years rent free.

3.02 LATE CHARGES AND RETURN CHECK CHARGES. If payment of any Fixed Rent shall not have been paid by the date on which such amount was due and payable a late charge equal to the greater of (i) FIFTY DOLLARS (\$50.00) and (ii) one and one-half percent (1-1/2%) per calendar month or any part thereof (or the then maximum lawful interest rate, if less), from the date on which such amount was due, on the amount overdue shall, at the Landlord's option, be payable as damages for Tenant's failure to make prompt payment. In addition to any other penalties or remedies available to Landlord in the event of any late payment by Tenant, if any check in payment of any Fixed Rent is returned to Landlord by Tenant's bank by reason of insufficient funds, uncollected funds or otherwise, a return check administrative charge of FIFTY DOLLARS (\$50.00) shall be payable to Landlord by Tenant. The late charges and return check administrative charges for any month shall be payable the first day of the following month, and in default of payment of any such charges, Landlord shall have (in addition to all other remedies) the same rights as provided in this Lease for nonpayment of Rent. Landlord and Tenant agree that the foregoing late charges and return check administrative charges represent a reasonable estimate of the costs which Landlord will incur by reason of late payment by Tenant and returned checks, and are fair compensation to Landlord for its loss suffered by such late payment or returned check. Nothing in this Section contained and no acceptance of late charges by Landlord shall be deemed to extend or change the time for payment of Fixed Rent.

3.03 ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of any lesser amount than the amount stipulated to be paid hereunder shall be deemed other than on account of the earliest stipulated Fixed Rent nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction, and Landlord may accept any check or payment without prejudice to Landlord's right to recover the balance due or to pursue any other remedy available to Landlord.

3.04 SECURITY DEPOSIT: None required

ARTICLE IV COMMON AREAS AND PARKING

4.01 MAINTENANCE OF AND CHANGES IN COMMON AREAS. Subject to the provisions of Section 7.04, Landlord will operate, manage, equip, light, repair and maintain, or cause to be operated, managed, equipped, lighted, repaired and maintained, the Common Areas for their intended purposes. Landlord reserves the right, at any time and from time to time to make changes, additions, alterations or improvements in and to such Common Areas provided same shall not unreasonably block or interfere with Tenant's means of ingress or egress to and from the Demised Premises.

4.02 USE OF COMMON AREAS. Tenant and its licensees and their respective officers, employees, agents, customers and invitees, shall have the non-exclusive right, in common with Landlord and all others to whom Landlord has granted or may hereafter grant such rights. Landlord reserves the right, at any time and from time to time, to close temporarily all or any portions of the Common Areas for any of the following purposes when in Landlord's

reasonable judgment any such closing is necessary or desirable: to make repairs or changes therein or to effect construction, repairs or changes, to prevent the acquisition of public rights in such areas, to protect or preserve persons or property and Landlord may do such other acts in and to the Common Areas as in its judgment may be desirable. While conducting business after regular business hours on weeknights or weekends, Tenant may access the public restrooms. Tenant's clients may be permitted to use the public restrooms but are not permitted to enter any other part of the City Hall building closed to the public after regular business hours on weeknights and weekends.

4.03 PARKING. Tenant and its officers, agents, and employees shall park their vehicles only in areas from time to time designated by Landlord as the areas for such parking. Tenant shall, upon written notice from Landlord, within five (5) days, furnish Landlord, or its authorized agent, the State automobile license tag number assigned to its vehicle or vehicles and the vehicles of all of its officers, agents and employees employed in the Demised Premises. Landlord, after notice to Tenant that Tenant or any of its officers, agents or employees are not parking in said designated parking areas or off-premises, as applicable, may, at its option, in addition to any other remedies it may have, tow away such vehicles at Tenant's expense.

ARTICLE V UTILITIES AND SERVICES

5.01 UTILITIES AND MECHANICAL MAINTENANCE. Landlord shall furnish heat, electricity and water/sewer utilities serving Tenant and charges for said utilities shall be included in the Fixed Rent. Tenant shall make all necessary arrangements for internet services and shall be responsible for all associated charges for said utilities. The City of Muskegon will provide phone land lines and bill SAFEbuilt Michigan, LLC at actual cost with no markup. Separate telephone and internet lines are required for Tenant that shall not be connected to the telephone or internet systems used by City employees in the building.

ARTICLE VI USE AND ENJOYMENT OF DEMISED PREMISES

6.01 PERMITTED USES. Tenant shall use the Demised Premises solely for the purpose of conducting the business of SAFEbuilt Michigan, LLC and Tenant shall not use or permit or suffer the use of the Demised Premises for any other purpose whatsoever. The City of Muskegon will allow SAFEbuilt Michigan, LLC to service other W. Michigan communities from the leased space within City Hall. Tenant shall not advertise its services by stating it conducts business in Muskegon City Hall or in any way suggest the City endorses Tenant's services because of this Lease agreement. Marketing brochures, business cards and all forms of advertising may state the address of the building of the Demised Premises but may not refer to "City Hall" so as to suggest a connection between SAFEbuilt Michigan, LLC and the City beyond that of Tenant and Landlord. Tenant acknowledges that Muskegon City Hall is open to the public between the hours of 8:30 a.m. to 5:00 p.m. and for morning and evening meetings before or after those hours on certain days. Tenant waives any claim or cause of action regarding the nonavailability of the office space during emergency periods when, due to electrical power outages, police or fire situations or acts of nature that City Hall remains closed to Tenant.

6.02 SIGNS. Tenant shall provide a suitable identification sign or signs of such size, design and character as Landlord shall designate and/or approve, and Tenant shall install same on the door to Suite – (Former Leisure Services Space). All costs of fabricating, constructing, installing, operating, maintaining and removing any and all such identification signs shall be borne by Tenant. Other than such permitted signs, Tenant shall not place or install, or permit or suffer to be placed or installed, or maintain, any sign upon or outside of the Demised Premises or in any part of the building unless approved by Landlord. Tenant shall not place, install or maintain, or permit or suffer to be placed, installed or maintained, on the exterior of the Demised Premises, any awning, canopy, banner, flag, pennant, aerial, antenna or the like, nor place or maintain on the interior or exterior of the glass of the windows or the doors of the Demised Premises any sign.

6.03 COMPLIANCE WITH LAWS. Tenant shall comply with the certificate of occupancy relating to the Demised Premises and with all Requirements. Without limiting the generality of the foregoing, Tenant shall not engage in any activity on or about the Demised Premises that violates any Requirement(s) pertaining to environmental laws or hazardous substances and shall take all investigatory and/or remedial action required by any governmental agency or applicable Requirements for cleanup and removal of any contamination involving any hazardous substance created or caused, directly or indirectly, by Tenant.

6.04 ACCESS TO PREMISES AND EXCAVATION. Landlord shall have the right to enter upon and in the Demised Premises at all reasonable times to examine the same and to make such repairs, alterations, improvements and additions in the Demised Premises as Landlord may deem necessary, and Landlord shall be allowed to take all materials into and upon the Demised Premises that may be required therefor without the same constituting an eviction of Tenant, in whole or in part, and the Fixed Rent shall in no way abate while such repairs, alterations, improvements or additions are being made by reason of loss or interruption of the business of Tenant due to the prosecution of any such work; provided, however, Landlord shall use reasonable efforts not to unreasonably interfere with or interrupt Tenant's business in the Demised Premises, but in no event shall Landlord be required to incur any additional expense for work to be done during hours or days other than regular business hours and days.

6.05 MECHANICS' LIENS. Nothing contained in this Lease shall be deemed, construed or interpreted to imply any consent or agreement on the part of Landlord to subject Landlord's interest or estate to any liability under any mechanic's or other lien law. If any mechanic's or other lien or any notice of intention to file a lien is filed against the City, or the Demised Premises, or any part thereof, for any work, labor, services or materials claimed to have been performed or furnished for or on behalf of Tenant or anyone holding any part of the Demised Premises through or under Tenant, Tenant shall cause the same to be canceled and discharged of record by payment, bond or order of a court of competent jurisdiction within 20 days after the earlier to occur of (i) such lien or notice becoming of record or (ii) the giving of notice by Landlord to Tenant. Landlord shall have the right to post any notices of non-responsibility which Landlord may deem necessary for the protection of Landlord and Landlord's interest in the Demised Premises from mechanics' liens or liens of a similar nature; and Tenant shall, before the commencement of any work which might result in any such lien, give written notice to Landlord of its intention to do so in sufficient time to enable the posting of such notices.

ARTICLE VII

ALTERATIONS, REPAIRS AND CHANGES

7.01 ALTERATIONS BY TENANT. Tenant shall not make or cause to be made any improvements, alterations, additions, changes, replacements or installations to the Demised Premises, or make any holes or cuts in the walls, ceilings, roofs, or floors thereof, or architectural treatment of the Demised Premises, without on each occasion first obtaining the consent of Landlord, and if such consent is granted, Tenant shall carry such worker's compensation and general liability insurance and such other insurance as Landlord may require, naming Landlord as an additional insured. In no event whatsoever shall Tenant make any penetrations into the roof deck or the concrete slab or any fire wall without having obtained Landlord's prior written consent, which consent, it is expressly understood and agreed by Tenant may be given or withheld by Landlord in Landlord's sole and absolute discretion, and which consent may be expressly conditioned upon Landlord, at Tenant's sole cost and expense, performing such work on Tenant's behalf and/or overseeing the performance of such work by Tenant to Landlord's satisfaction. Tenant shall submit to Landlord plans and specifications for such work at the time Landlord's consent is sought. Any such improvements, alterations, additions, changes, replacements or installations will be performed in a good and workmanlike manner in accordance with the approved plans and specifications and in compliance with all Requirements and shall be performed and completed by Tenant in an expeditious manner. The cost of such improvements, alterations, additions, changes, replacements or installations shall be paid in cash or its equivalent so that the Demised Premises shall at all times be free of liens for work, labor, services or materials claimed to have been performed or furnished for or on behalf of Tenant or anyone holding any part of the Demised Premises through or under Tenant. All contractors and subcontractors performing work in or to the Demised Premises shall be approved by Landlord prior to the performance of any such work.

7.02 REPAIRS BY LANDLORD. Landlord shall make necessary structural repairs to the Demised Premises (but excluding windows and window frames, doors, plate glass, store fronts, showcases and signs) and shall keep in good condition and repair the foundations and roof of the Demised Premises and those portions of the utility systems that are for common use. Landlord shall not be required to make any such repairs where same were caused or occasioned by any act, omission or negligence of Tenant, or licensees of Tenant, or any of their respective officers, employees, agents, customers, invitees or contractors. Landlord shall not be required to commence any such repair until notice shall be received from Tenant specifying the nature of the repair. The provisions of this Section shall not apply in the case of damage by fire or other casualty or by eminent domain, in which event the obligations of the parties shall be as provided in other Sections of this Lease. All costs and expenses incurred by Landlord pursuant to the provisions of this Section shall be deemed to constitute Common Area costs.

7.03 REPAIRS AND MAINTENANCE BY TENANT. Except for repairs required to be performed by Landlord under Section 7.02, Tenant shall make all repairs and replacements to, and shall keep clean, neat, safe, sanitary, in good order, repair and condition (including all painting and decorating necessary to maintain at all times a clean and sightly appearance) and free of vermin, the Demised Premises, including both inside and the outside, and any equipment, facilities, fixtures and systems therein. In making repairs, Tenant shall use materials equal in kind and quality to the original work. Tenant shall repaint and refurbish the Demised Premises at reasonable periodic intervals to assure that the Demised Premises is kept in a first-class and attractive condition through the Term. All alterations and repairs hereunder shall be subject to the requirements and conditions set forth in Section 7.01 hereinbefore and shall be

performed by contractors approved by Landlord, and all such work shall conform to existing structures and quality of the building.

7.04 CHANGES BY LANDLORD. Landlord reserves the right, at any time and from time to time, to increase, reduce or change the number, type, size, location, elevation, nature and use of any of the Common Areas including, without limitation, the right to move and/or remove same and to add additional stories thereon, provided same shall not unreasonably block or interfere with Tenant's means of ingress or egress to and from the Demised Premises.

7.05 LANDLORD'S CONSENT. In no event shall Landlord be required to consent to any improvements, alterations, additions, changes, replacements or installations which, when completed, will, in Landlord's judgment, be of such a character which will reduce the value, rentability or usefulness of the Demised Premises or which will affect the facade, mechanical, electrical or structural components of either the Demised Premises or the building or which would reduce the Floor Space of the Demised Premises.

7.06 FIRE OR CASUALTY; CONDEMNATION. In the event the Demised Premises are totally destroyed by fire, wind, or other causes beyond the control of the Landlord, or are condemned or otherwise taken by authority of local, state or federal government, then in any of these events the lease Term shall cease and terminate as of the date of such destruction, condemnation or taking. In the event of any loss or damage by fire or other casualty for which the building or improvements on the Demised Premises may be insured, all amounts payable upon any policy or policies of insurance shall be paid to Landlord. If the Demised Premises are damaged by fire, rain, wind or other such causes, so as to render the same partially untenable or partially unfit for use, but are repairable within a reasonable time, then this Lease shall remain in full force and effect, but Tenant's rent shall be proportionately reduced until the Demised Premises are repaired.

ARTICLE VIII INSURANCE AND INDEMNITY

8.01 INSURANCE BY TENANT. A. Tenant shall maintain the following insurance at Tenant's sole cost and expense: (a) commercial general public liability insurance covering the Demised Premises and the conduct or operation of business therein, naming Landlord as additional insured, with limits of not less than \$1,000,000 combined single limit for bodily injury or death and for property damage, including water damage and sprinkler leakage liability, (b) fire and extended coverage insurance covering Tenant's stock in trade, fixtures, furniture, furnishings, removable floor coverings, equipment, signs and all other property of Tenant in the Demised Premises to the extent of one hundred (100%) percent of the full insurable value of the property covered and not less than the amount sufficient to avoid the effect of the co-insurance provisions of the applicable policy or policies, (c) comprehensive automobile liability insurance including owned, non-owned and hired car coverage in an amount not less than \$3,000,000 combined single limit per occurrence for bodily injury or death and for property damage, and (d) any other insurance required for compliance with any Requirements. Tenant shall deliver to Landlord and any additional insured specified by Landlord to Tenant such fully paid-for-policies or certificates evidencing such coverage before the Commencement Date. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional insured such renewal policy or certificates

evidencing such renewal at least 30 days before the expiration of any existing policy. All such policies shall be issued by companies of recognized responsibility licensed to do business in the state in which the Demised Premises is located and having a general policy holder's rating of not less than A, and financial ratings of not less than Class VIII as rated in the most current "Best's" Insurance Reports, and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Landlord and any additional insured are given at least 30 days prior written notice by certified or registered mail of such cancellation or modification.

B. Tenant shall require any contractor of Tenant performing work in, on or about the Demised Premises to take out and keep in full force and effect, at no expense to Landlord (a) commercial general public liability insurance in respect of the Demised Premises, and the conduct of its work therein, naming Landlord as additional insured, with limits of not less than \$3,000,000 combined single limit for bodily injury or death and for property damage, including water damage and sprinkler leakage legal liability; (b) workers' compensation or similar insurance in form and amounts required by law (but in no event less than a combined single limit of \$1,000,000 per occurrence); and (c) comprehensive automobile liability insurance including owned, non-owned and hired car coverage in an amount not less than \$3,000,000 combined single limit per occurrence for bodily injury or death and for property damage.

C. It is understood and agreed by naming Landlord as an additional insured, coverage afforded is considered to be primary and any other insurance Landlord may have in effect shall be considered secondary and/or excess. It is further understood and agreed that thirty (30) days advance written notice shall be given to Landlord of cancellation, non-renewal, reduction and/or material change of any required insurance policy.

8.02 INCREASE IN PREMIUMS. Tenant shall not do, permit or suffer to be done any act, matter, thing or failure to act in respect of the Demised Premises or use or occupy the Demised Premises or conduct or operate Tenant's business in any manner objectionable to insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the Demised Premises or the building or any part thereof shall become void or suspended or bring or keep anything upon the Demised Premises which shall increase the rate of premiums of insurance on the Demised Premises or the building or any part thereof or on the property located therein. If by reason of failure of Tenant to comply with the foregoing provisions of this Section, any premiums in respect of insurance maintained by Landlord shall be higher than those which would normally have been in effect, then Tenant shall be liable to Landlord as hereinafter set forth. In case of a breach of this covenant, in addition to all other rights and remedies of Landlord hereunder, Tenant shall (a) indemnify Landlord and hold Landlord harmless from and against any loss which would have been covered by insurance which shall have become void or suspended because of such breach by Tenant and (b) pay to Landlord any and all increases of premiums on any insurance, including, without limitation, rent insurance, resulting from any such breach. In addition to the foregoing, Tenant will, if Landlord so requests, cease any action and/or remove any objects or improvements which have resulted in increases in Landlord's insurance premiums.

8.03 INDEMNIFICATION AND RELEASE. In the event legal proceedings are threatened or filed against either party involving in any manner the performance of this Lease, notification shall be given to the other party, including any knowledge or information which may result in a claim against either of them, and cooperation shall take place between the parties whenever any claim is filed against either party, involving in any manner the performance of this

Lease. Tenant shall defend and indemnify Landlord and shall hold Landlord harmless from and against any and all injuries, losses, claims, actions, damages, liabilities and expenses (including attorneys' fees and expenses) to persons or property arising from, related to or in connection with the use or occupancy of the Demised Premises or the conduct or operation of business therein or any default in the performance of any obligation of Tenant under this Lease. Landlord shall not be liable or responsible for, and Tenant hereby releases Landlord from, all liability or responsibility to Tenant or any person claiming by, through or under Tenant, by way of subrogation or otherwise, for any loss or damage to any property in or around the Demised Premises or to Tenant's business irrespective of the cause of such loss or damage, and Tenant shall require its insurer(s) to include in all of Tenant's casualty insurance policies which could give rise to a right of subrogation against Landlord a clause or endorsement whereby the insurer(s) shall waive any rights of subrogation against Landlord. If Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, Tenant shall indemnify and hold Landlord harmless from and against all costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation.

ARTICLE IX MISCELLANEOUS

9.01 ASSIGNMENT OR SUBLETTING. Tenant shall not assign or sublet its rights under this Lease.

9.02 RENEWAL. This Lease may be renegotiated for additional terms following the completion of the current Term.

9.03 DEFAULT AND REPOSSESSION. If the Demised Premises shall be deserted or vacated, or if there shall be a default in the payment of rent or any part thereof for more than seven days after written notice of such default by the Landlord, or if there shall be default in the performance of any other covenant, agreement, condition, rule or regulation herein contained or incorporated herein by reference for more than seven days after written notice of such default by the Landlord, this Lease (if the Landlord so elects) shall thereupon become null and void, and the Landlord shall have the right to reenter or repossess the Demised Premises, either by summary proceedings, surrender, or otherwise, and dispossess and remove therefrom the Tenant, or other occupants thereof, and their effects, without being liable to any prosecution therefor. Tenant agrees to pay all expenses and damages incurred by Landlord as a result of Tenant's default, including Landlord's reasonable attorney fees. If Tenant shall fail to perform any of its obligations hereunder, Landlord may, if it so elects, and after five days' prior notice to Tenant, cure such default at Tenant's expense, and Tenant agrees to reimburse Landlord (as additional rent) for all costs and expenses incurred as a result thereof upon demand.

9.04 NULL AND VOID. This Lease runs with an Agreement for Professional Services, entered into by and between the City of Muskegon and SAFEbuilt Michigan, LLC, and (if the Landlord so elects) shall become null and void at the expiration or termination of the Agreement for Professional Services. The Agreement for Professional Services runs with this Lease and (if the Landlord so elects) shall become null and void at the expiration or termination of this Lease.

9.05 OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY. All installations, alterations, additions, betterments and improvements upon the Demised Premises,

made by any party, shall become the property of Landlord when installed and shall remain upon and be surrendered with the Demised Premises as a part thereof at the expiration or sooner termination of the Term. Movable trade fixtures and other personal property which Tenant installs at its own expense shall remain Tenant's property and may be removed at any time provided Tenant promptly repairs any damage caused by such removal and provided further that Tenant shall not then be in default under this Lease.

9.06 END OF TERM. At the expiration or sooner termination of the Term, Tenant shall quit and surrender to Landlord the Demised Premises, broom clean and in good order and condition, ordinary wear and tear and damage by fire and any other insured casualty excepted. At such expiration or sooner termination Tenant shall remove all property of Tenant and its signage and at the option of Landlord, shall remove any or all alterations and other improvements made by Tenant to the Demised Premises as designated by Landlord and Tenant shall repair all damage to the Demised Premises caused by such removal and restore the Demised Premises to the condition in which they were at the Commencement Date. Such removal, repair and restoration shall be effected in accordance with the rules and regulations, including construction rules and guidelines, of Landlord. It is agreed that any holding over by the Tenant upon expiration of the Term of this Lease or any renewal or extension hereof, shall operate as an extension of this Lease from month to month only.

9.07 WAIVER OF JURY TRIAL AND RIGHT TO COUNTERCLAIM. Landlord and Tenant shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Demised Premises, and any emergency or other statutory remedy. Tenant further agrees that it shall not interpose any counterclaim(s) in a summary proceeding or in any action based on holdover or non-payment of Fixed Rent.

9.08 NO WAIVER. The failure of Landlord to insist in any one or more cases upon the strict performance or observation of any obligation of Tenant hereunder or to exercise any right or option contained herein shall not be construed as a waiver or relinquishment for the future of any such obligation of Tenant or any right or option of Landlord. Landlord's receipt and acceptance of Fixed Rent, or Landlord's acceptance of performance of any other obligation by Tenant, with knowledge of Tenant's breach of any provision of this Lease, shall not be deemed a waiver of such breach. No consent, approval or waiver, express or implied, by Landlord or Tenant to or of any breach of any covenant, agreement or obligation, of Landlord or Tenant shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, agreement or obligation unless in each case in writing signed by Landlord or Tenant, whichever the case may be. Landlord's failure during the Term to prepare and deliver to Tenant any bill, statement or notice with respect to any item of Fixed Rent or any increases thereto by operation of any provision of this Lease, shall not in any way cause Landlord to forfeit or surrender its right to collect any item of Fixed Rent which may become due during the Term nor shall such failure extend the date(s) on which any such items of Fixed Rent is due. In no event shall Landlord be deemed to have any obligation to bill any item of Fixed Rent or any increases thereto. IN NO EVENT SHALL LANDLORD BE LIABLE FOR THE ACTS OF ANY TENANT OR OCCUPANT. IN ADDITION, IN NO EVENT SHALL LANDLORD BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, TENANT'S LOST PROFITS OR GOOD WILL.

9.09 QUIET ENJOYMENT. Landlord covenants that Tenant, on paying the Fixed Rent and performing all of Tenant's obligations under this Lease, shall peacefully and quietly have, hold and enjoy the Demised Premises, the Common Areas and the appurtenances throughout the Term without hindrance, ejection or molestation by any person lawfully claiming under Landlord, subject to the terms and provisions of this Lease and to all mortgages and ground and underlying leases of record to which this Lease may be or become subject and subordinate. The parties acknowledge that as of the date of signing this Lease, the City is one of Tenant's clients and uses Tenant's business services. Leasing space within the City Hall building is in no way to be construed as entering into an employer-employee relationship.

9.10 NOTICES. Any notice, demand, waiver, approval or consent hereunder shall be in writing and shall be deemed duly served if mailed by registered or certified mail, postage prepaid, in any post office station or letter box in the continental United States, return receipt requested, or sent by reputable overnight carrier with delivery charges prepaid and proof of delivery service to be provided, addressed:

If to Tenant, to it at the address Tenant shall have last designated by notice to Landlord.

If to Landlord, to it at 933 Terrace St., Muskegon, MI 49440; Attention: City Manager or such other address as Landlord shall have last designated by notice to Tenant. With a copy to, Parmenter O'Toole at 601 Terrace Street, Muskegon MI 49440; Attention: John Schrier.

Such notice, demand, waiver, approval or consent shall be deemed served two (2) days after mailing, or the next business day if sent by reputable overnight carrier.

9.11 LEGAL EXPENSES. If a suit be brought for recovery of possession of the Demised Premises, for the recovery of Fixed Rent, or because of the breach of any other covenant, agreement or condition on the part of Tenant to be kept or performed, or a violation of any rules and regulations promulgated pursuant to this Lease and a breach shall be established, Tenant shall pay Landlord all expenses incurred in connection therewith, including appeals of the above, including reasonable attorneys' fees and expenses. In case any such suit is settled before judgment is entered therein, such costs, expenses and fees, including reasonable actual attorney fees, shall nevertheless be recoverable by Landlord as part of said settlement.

9.12 INTERPRETATION. Irrespective of the place of execution or performance, this Lease shall be governed by and construed in accordance with the laws of the state of Michigan.

9.13 LANDLORD'S RIGHTS. The taking of any action permitted hereunder by Landlord shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of the Demised Premises, or an eviction, partial eviction or constructive eviction of Tenant from the Demised Premises or any portion thereof and shall not relieve Tenant of its obligations under this Lease.

9.14 COMPLETE AGREEMENT. There are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Lease that are not fully expressed in this Lease. This Lease cannot be changed or terminated orally or in any manner other than by a written agreement executed by both parties. In making and executing this Lease, Tenant has relied solely on such investigations, examinations and inspections as Tenant has chosen to make or has made and Tenant

acknowledges that Landlord has afforded Tenant the opportunity for full and complete investigations, examinations and inspections.

9.15 SEVERABILITY. Should any one or more of the provisions of this Lease be determined to be invalid, unlawful, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Lease shall not in any way be impaired or affected.

9.16 COUNTERPARTS. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute but one Lease.

9.17 TIME OF THE ESSENCE. Time is of the essence of each term, covenant, condition and obligation of this Lease.

9.18 INDEPENDENT CONTRACTOR STATUS. Nothing in this Lease shall be deemed to alter Tenant's independent contractor status in relationship to Landlord. This Lease shall not create an employee-employer relationship between Tenant and Landlord. At no time during the Term of this Lease shall the City be the source of the majority of SAFEbuilt Michigan's work.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto executed this Lease as of the day and year first above written.

LANDLORD:

City of Muskegon, a Michigan municipal corporation

By: _____
Stephen Gawron, Mayor

By: _____
Ann Meisch, City Clerk

TENANT:

SAFEbuilt Michigan, LLC

By: _____

Name: _____

Title: _____

(Tenant's Federal Taxpayer Identification
Number is - 27-1314735)

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: January 19, 2017

RE: SEIU Collective Bargaining Agreement

SUMMARY OF REQUEST:

City Staff and Service Employees International Union representatives have worked over the past four months to develop a new five-year contract for the City's Department of Public Works personnel. As part of the agreement, a number of issues were addressed, including pension costs, wages, and benefits. The new agreement is beneficial to both parties.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the Collective Bargaining Agreement with the Service Employees International Union as presented.

COMMITTEE RECOMMENDATION:

TENTATIVE AGREEMENT

Between

City of Muskegon

And

SEIU Local 517M

(representing DPW)

1. **Section 13**

Seasonal Employees – Delete entire section

2. **Section 51** – Commercial Drivers License

51.1 – Delete “Beach Maintenance”

51.2 – Delete (a) – which refers to Dennis Pintoski

3. **Section 36** – Longevity Pay Plan

36.2 – Add a “me too” clause to this section which addresses if “any other city employee” receives more, than bargaining unit members will receive the same.

4. **Appendix C** – Water License

Increase the “S” licenses to the following amounts:

S-1 \$750.00

S-2 \$500.00

S-3 \$300.00

5. **Section 24** – Vacations

Effective Jan. 1, 2020, an employee will receive an addition week of vacation upon the completion of their 24th year.

6. **Section 53** – Defined Contribution Retirement Plan

53.2 – Contributions. – Add to existing language.

Effective January 1, 2019, the City shall contribute six percent (6%) of compensation. The member in this plan may make a one-time election to either not to contribute or to contribute two percent (2%) of compensation. If the member elects to contribute, then the City shall match contribution, dollar-for-dollar. "Compensation" shall be Medicare-taxable wages as reported on the employee's W-2 Form.

7. **Section 52 – Defined Benefit Retirement Plan**

52.4 – Retirement Benefit

Effective January 1, 2017, a bridged benefit will be implemented as follows:

2.25% multiplier for service prior to Jan. 1, 2017 and a 2.0% multiplier for service after Jan. 1, 2017; maximum benefit: 80% FAC at termination of employment.

The changes to Section 52 only apply if the City Commission affirmatively votes to bridge the non-represented employee to a 2.0 multiplier.

8. **Section 25.12 – Sick Leave**

Upon termination of employment under honorable conditions, the employee will be compensated at the rate of ~~one-half~~ three quarters (3/4) of the value of the accumulated unused sick leave, providing the employee has worked a minimum of twelve (12) consecutive months.

9. **Wages**

2017	10%
2018	1%
2019	1%
2020	2.5%
2021	2.5%

AGENDA ITEM NO. _____
CITY COMMISSION MEETING _____

TO: Honorable Mayor and City Commissioners

FROM: Frank Peterson, City Manager

DATE: January 19, 2017

RE: POLC Collective Bargaining Agreement

SUMMARY OF REQUEST:

City Staff and Police Officers Labor Council representatives have worked over the past nine months to develop a new five-year contract for the City's patrol officers. As part of the agreement, a number of issues were addressed, including pension costs, wages, and benefits. The new agreement is beneficial to both parties and is expected to help with police officer recruiting and retention.

FINANCIAL IMPACT:

None.

BUDGET ACTION REQUIRED:

None.

STAFF RECOMMENDATION:

To approve the Collective Bargaining Agreement with the Police Officers Labor Council as presented.

COMMITTEE RECOMMENDATION:

Police Officers Labor Council (POLC) – Muskegon Police Department-Patrol
Officers Proposals to the Employer, City of Muskegon, on May 3, 2016
Settlement Agreement

1. All provisions of the CBA effective through December 31, 2016, shall continue except as modified by this proposal and/or any other agreement to changes, or as required by law.

AGREED TA 8th 10/01/16

2. Section 15-Overtime, Article 2-Training, Paragraph g-FTO Compensation Effective January 1, 2001, Field Training Officers (FTO) shall receive ~~one hour~~ **one and one-half hour (1.5)** of paid compensation for days when an employee is the FTO.

AGREED* TA 8th 10/01/16

3. Section 19-Sick Leave, Article 2

Sick leave may be accumulated up to a maximum of one hundred thirty-two (132) days and in no event shall sick leave be accumulated by any employee in excess of one hundred thirty-two (132) days. After an employee has accumulated one hundred thirty-two (132) days of accrued, unused sick leave, then all additional accruals shall be paid annually at the rate of ~~fifty percent (50%)~~ **seventy five percent (75%)** of such accrual in excess of one hundred thirty-two (132) days. All payments due under this section shall be paid annually on January 31 of the calendar year next succeeding the accrual.

AGREED* TA 8th 10/01/16

4. Section 19-Sick Leave, Article 6, Paragraph (c)

Any injury or illness to the employee's spouse, child, stepchild, **(which does not require hospitalization)**. **Any injury or illness to the employee's** mother, father, mother-in-law or father-in-law, which requires the hospitalization of that individual;

AGREED* TA 8th 10/01/16

5. Section 19-Sick Leave, Article 7

An employee's absence from work due to duty-connected disability, **incurred in the employment of the City shall receive his straight time salary for the period of said disability and absence, but not to exceed five (5) working days commencing the date of**

~~the injury for which he/she is receiving compensation, shall not be deducted from his/her sick leave unless he/she shall elect to be paid the difference between Workmen's compensation benefits and his/her normal wage or salary, to be paid out of the operating funds of the department involved, In which event said employee's earned sick leave shall be used at the rate of one-third (1/3) sick leave day for each day of such service- connected disability, until such sick leave accumulation has been exhausted, at which time such payments out of the operating funds of the department involved shall cease, unless the City Commission shall authorize an extension of leave in the manner provided in Section 19.8 hereof. Checks for such service connected disability will be issued only upon receipt of a statement signed by the Employer's physician to the effect that the injured employee is unable to perform his/her regular duties or such other temporary tasks available in the framework of the City functions.~~

AGREED* TA 8th 12/21/16

6. Section 19-Sick Leave, Article 10

Upon termination of employment under honorable conditions, accrued sick leave will be compensated at the rate of ~~one-half~~ **seventy-five percent (75%)** of the value of the accumulated sick leave, providing the employee has worked a minimum of twelve (12) months.

AGREED* TA 8th 12/21/16

Add 18.7 to read as follows: Employees may cash out any unused vacation time at 100%. The funds may be taken as cash or in contributions to an eligible HCSP or deferred compensation plan. The Union accepts. TA 8th 12/21/16

Amend 19.8(f) to read as follows: The employer may require verification of sick leave taken in excess of three (3) days twenty-four (24) consecutive hours. This will not preclude the employer from requesting verification of illness of less than three (3) days twenty-four (24) consecutive hours if the employee has shown a pattern which would indicate misuse of sick leave. The Union accepts. TA 8th 12/21/16

7. Section 20-Holiday Pay, Article 1

The Employer will recognize the following paid holidays:

New Year's Day (January 1)

Labor Day

Good Friday

Veteran's Day

Easter

Thanksgiving Day

Memorial Day

Christmas Day (December 25)

Independence Day

Martin Luther King Day

Christmas Eve

New Years Eve

City counters with adding Martin Luther King Jr Day only. The Union Accepts
The City counters with adding MLK Day, deleting Good Friday and adding 12
hours to floating holiday time. Union accepts. TA 8th 10/01/16

8. Section 43-Duration and Renewal

This Agreement shall be binding upon the parties hereto, their successors and assigns. The Agreement shall commence as of the first day of January, 2014 ~~2017~~ and terminate as of the 31st day of December, ~~2016~~ 2021. It shall be automatically renewed from year to year thereafter, unless either party shall notify the other in writing at least ninety (90) days prior to the expiration date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than sixty (60) days prior to the anniversary date.

CITY COUNTERS WITH 5 YEAR CONTRACT. The Union accepts. TA 8th 10/01/16

We counter the Union's proposed changes to Appendix A with the attached proposed Appendix A, which shows a 5% initial increase for all employees with 10 years or less seniority, a 7.5% initial increase for employees with 11-20 years of service, and a 10% initial increase for employees with 21 or more years of service. In years 2-4, the proposed Appendix A shows a 1% raise each year for all levels. In year 5, the proposed Appendix A shows a 3% raise for all levels. The proposed Appendix A also allows for a 1% increase above scale for active neighborhood officers and a 1.5% increase above current scale for all active detectives. The City's proposed Appendix A is contingent on the following changes to the defined benefit pension system: The Union counters with pay increase of 5%, 4%, 3%, 2.5%, 2.5%. The City counters with wage increases of 5%, 2%, 2%, 2.5%, 3%. The Union accepts. TA 8th 10/01/16

Section 34-Defined Benefit Retirement Plan, Article 3-Contribution Rate.

Employees shall contribute six and one-half percent (6.5%) of compensation as defined by MERS. Effective January 1, 2018. Employees shall contribute five and one-half percent (5.5%) of compensation as defined by MERS. Effective January 1, 2019. Employees shall contribute four and one-half percent (4.5%) as defined by MERS. Effective January 1, 2020. Employees shall contribute four percent (4%) of compensation as defined by MERS. TA 8th 10/01/16

Section 34.4: RETIREMENT BENEFIT: Effective January 1, 2017, the pension multiplier shall be bridged to 2.50% of final average compensation (MERS FAC-3), not to exceed 80% of an employee's final average compensation. The Union counters with 2.67% The City accepts. TA 10/01/16

Section 35-Defined Contribution Retirement Plan, Article 2-Contributions.

Members in this plan shall contribute six (6%) percent of compensation. The City shall contribute ten and one-half (10.5%) percent of compensation. Effective January 1, 2018, the City shall contribute eleven and one-half percent (11.5%) of compensation. Effective January 1, 2019, the City shall contribute twelve and one-half percent (12.5%) of compensation. Effective January 1, 2020, The City shall contribute thirteen percent (13%) of compensation. Compensation shall be Medicare taxable wages as reported on the employee's W-2.

TA ~~8th~~
10/21/16

Work on changes to Appendix E – uniforms. Shrinking the list to include essential items only. The Union accepts as presented

Delete Appendix E, replace Section 22.2 with; The Police Department shall supply authorized uniforms (all seasons), accessories, equipment (excluding firearm), long gun(s) and foot wear at the Department's expense. The Police Department will implement a police with a detailed list of items that will be issued/supplied/maintained to sworn police officers during employment. Officers may request specialized uniforms, gear, equipment not provided by the Department, if authorized by the Director of Public Safety, the items may be purchased by the employee.

TA ~~8th~~ 10/21/16

Accept the union proposal regarding vacation selection provisions to match current practices of selecting vacations prior to selecting shifts (November). However, we would like to limit the time employees can take to select their vacation. We would like to streamline the process to one week. The Union accepts.

TA ~~8th~~ 10/21/16

Amend the part time employee use/assignment policy to provide more flexibility. The Union rejects the City's last offer and counters with adding "Safebuilt" to the current language (Section 38-Part-time Officers Article 3)

TA ~~8th~~ 10/21/16

Yellow-City
Blue-Union
Green-New

Commission Meeting Date: January 24, 2017

Date: January 17, 2017
To: Honorable Mayor and City Commissioners
From: Finance
RE: Defined Benefit Plan Adoption Agreement – Div 12 (DPW)

SUMMARY OF REQUEST: To approve the attached Defined Benefit Plan Adoption Agreement to bridge the pension benefit for current DPW employees from a 2.25% multiplier to a 2.0% multiplier with a frozen final average compensation.

FINANCIAL IMPACT: It is estimated that the City's contribution rate would decrease by about \$163,584 for fiscal year 2017.

BUDGET ACTION REQUIRED: Future budgets will be reflective of this change.

STAFF RECOMMENDATION: To approve the attached Defined Benefit Plan Adoption Agreement and authorize the Mayor to sign the agreement.

Defined Benefit Plan Adoption Agreement



1134 Municipal Way Lansing, MI 48917 | 800.767.MERS (6377) | Fax 517.703.9711

www.mersofmich.com

The Employer, a participating municipality or participating court within the state of Michigan, hereby agrees to adopt and administer the MERS Defined Benefit Plan provided by the Municipal Employees' Retirement System of Michigan, as authorized by 1996 PA 220, in accordance with the MERS Plan Document, as both may be amended, subject to the terms and conditions herein.

I. Employer Name City of Muskegon **Municipality #:** 6116

If new to MERS, please provide your municipality's fiscal year: _____ through _____.
Month Month

II. Effective Date

Check one:

A. ☐ If this is the **initial** Adoption Agreement for this group, the effective date shall be the first day of _____, 20____.

☐ This municipality or division is new to MERS, so vesting credit prior to the **initial** MERS effective date by each eligible participant shall be credited as follows (choose one):

- ☐ All prior service from date of hire
- ☐ Prior service proportional to assets transferred; all service used for vesting
- ☐ Prior service and vesting service proportional to assets transferred
- ☐ No prior service but grant vesting credit
- ☐ No prior service or vesting credit

☐ Link this new division to division number _____ for purposes of determining contributions (Unless otherwise specified, the standard transfer/rehire rules apply)

B. ☒ If this is an **amendment** of an existing Adoption Agreement (Defined Benefit division number 12), the effective date shall be the first day of February, 2017. *Please note:* You only need to mark **changes** to your plan throughout the remainder of this Agreement.

C. ☐ If this is a **temporary benefit** that lasts 2-6 months, the effective dates of this temporary benefit are from ___/01/___ through ___/___/___ for Defined Benefit division number _____.
Last day of month
Please note: You only need to mark **changes** to your plan throughout the remainder of this Agreement.

D. ☐ If this is to **separate employees from an existing Defined Benefit division** (existing division number(s) _____) into a new division, the effective date shall be the first day of _____, 20____.

E. ☐ If this is to merge division(s) _____ into division(s) _____, the effective date shall be the first of _____, 20____.

Defined Benefit Plan Adoption Agreement

III. Eligible Employees

Only those Employees eligible for MERS membership may participate in the MERS Defined Benefit Plan. A copy of ALL employee enrollment forms must be submitted to MERS. The following groups of employees are eligible to participate:

(Name of Defined Benefit division – e.g. All Full Time Employees, or General after 7/01/13)

☐ Only retirees will be in this division.

These employees are (check one or both):

☐ In a collective bargaining unit (attach cover page, retirement section, signature page)

☐ Subject to the same personnel policy

To receive one month of service credit (check one):

☐ An employee shall work 10 _____ hour days.

☐ An employee shall work _____ hours in a month.

All employees as classified under eligible employees, whether full or part time, who meet this criteria must be reported to MERS. If you change your current day of work definition to be more restrictive, the new definition only applies to employees hired after the effective date.

To further define eligibility, check all that apply:

☐ **Probationary Periods** are allowed in one-month increments, no longer than 12 months. During this introductory period, the Employer will not report or provide service time for this period, including retroactively. Service will begin after the probationary period has been satisfied.

The probationary period will be _____ month(s).

☐ **Temporary employees** in a position normally requiring less than a total of 12 whole months of work in the position may be *excluded* from membership. These employees must be notified in writing by the participating municipality that they are excluded from membership within 10 business days of date of hire or execution of this Agreement.

The temporary exclusion period will be _____ month(s).

IV. Provisions

Valuation Date: January 6, 2017

1. Review the valuation results

It is recommended that your MERS representative presents and explains the valuation results to your municipality before adopting. **Please choose one:**

☐ Our MERS representative presented and explained the valuation results to the

_____ on _____.
(Board, Finance Cmte, etc.) (mm/dd/yyyy)

☐ As an authorized representative of this municipality, I _____
(Name)

_____ waive the right for a presentation of the results.
(Title)

Defined Benefit Plan Adoption Agreement

2. This Adoption Agreement will be implemented in conjunction with a current actuarial valuation certified by a MERS actuary that sets contribution rates.
3. Annually, the MERS actuary will conduct an actuarial valuation to determine the employers' contribution rates. Employers are responsible for payment of said contributions at the rate, in the form and at the time that MERS determines.
4. Benefit Multiplier (1%-2.5%, increments of 0.05%) 2.00 % (max 80% for multipliers over 2.25%)

☒ Check here if multiplier will be effective for existing active members' future service only (Bridged Benefit as of effective date on page 1)

If checked, select one below:

- ☐ Termination Final Average Compensation (calculated over the members entire wage history)
- ☒ Frozen Final Average Compensation (FAC is calculated twice, once for the timeframe that matches the original multiplier, and once for the new multiplier)

5. Final Average Compensation (Min 3 yr, increments of 1 yr) _____ years
6. Vesting (5 -10 yrs, increments of 1 yr) _____ years
7. Required employee contribution (Max 10%, increments of 0.01%) _____ %
8. Compensation, for retirement purposes, is defined as base wages and all of the following. Check applicable boxes to *exclude* these types from your MERS reported wages:
 - ☐ Longevity pay
 - ☐ Overtime pay
 - ☐ Shift differentials
 - ☐ Pay for periods of absence from work by reason of vacation, holiday, and sickness
 - ☐ Workers' compensation weekly benefits (if reported and are higher than regular earnings)
 - ☐ A member's pre-tax contributions to a plan established under Section 125 of the IRC
 - ☐ Transcript fees paid to a court reporter
 - ☐ A taxable car allowance
 - ☐ Short term or long term disability payments
 - ☐ Payments for achievement of established annual (or similar period) performance goals
 - ☐ Payment for attainment of educational degrees from accredited colleges, universities, or for acquisition of job-related certifications
 - ☐ Lump sum payments attributable to the member's personal service rendered during the FAC period
 - ☐ Other: _____
 - ☐ Other 2: _____

Defined Benefit Plan Adoption Agreement

9. Early Normal Retirement with unreduced benefits

- | | |
|--|--|
| ☐ Age 50 with 25 years of service | ☐ Age 50 with 30 years of service |
| ☐ Age 55 with 15 years of service | ☐ Age 55 with 20 years of service |
| ☐ Age 55 with 25 years of service | ☐ Age 55 with 30 years of service |
| ☐ Any age with (20-30 yrs, in 1 yr increments) _____ years of service | |
| ☐ _____ | |

10. Other

- ☐ Surviving Spouse will receive _____% of Straight Life benefit without a reduction to the participant's benefit
- ☐ Duty death or disability enhancement (add up to additional 10 years of service credit not to exceed 30 years of service)
- ☐ Deferred Retirement Option Program (DROP)
- ☐ Annuity Withdrawal Program (AWP)
Calculation of the actuarial equivalent of the lump sum distribution made under AWP will be done using:
- ☐ Interest rate for employee contributions as determined by the Retirement Board, or
- ☐ MERS' assumed rate of return as of the date of the distribution.

11. Cost-of-Living Adjustment

☐ All current retirees as of effective date ☐ Retirees who retire between ____/01/____ and ____/01/____ <i>(one time increase only)</i>	☐ Future retirees who retire after effective date
Increase of ____% or \$____ per month	Increase of ____% or \$____ per month
Select one: ☐ Annual automatic increase ☐ One-time increase	☐ Annual automatic increase
Select one: ☐ Compounding ☐ Non-compounding	Select one: ☐ Compounding ☐ Non-compounding
Employees must be retired ____ months (6-12 months, increments of 1 month)	Employees must be retired ____ months (6-12 months, increments of 1 month)

V. Appointing MERS as the Plan Administrator

The Employer hereby agrees to the provisions of this *MERS Defined Benefit Plan Adoption Agreement* and appoints MERS as the Plan Administrator pursuant to the terms and conditions of the Plan. The Employer also agrees that in the event any conflict between MERS Plan Document and the MERS Defined Benefit Plan, the provisions of the Plan Document control.

Defined Benefit Plan Adoption Agreement

VI. Modification Of The Terms Of The Adoption Agreement

If the Employer desires to amend any of its elections contained in this Adoption Agreement, including attachments, the Governing Body or Chief Judge, by resolution or official action accepted by MERS, must adopt a new Adoption Agreement. The amendment of the new Agreement is not effective until approved by MERS.

VII. Enforcement

1. The Employer acknowledges that the Michigan Constitution of 1963, Article 9, Section 24, provides that accrued financial benefits arising under a public Employer's retirement plan are a contractual obligation of the Employer that may not be diminished or impaired, and prohibits the use of the Employer's required current service funding to finance unfunded accrued liabilities.
2. The Employer agrees that, pursuant to the Michigan Constitution, its obligations to pay required contributions are contractual obligations to its employees and to MERS and may be enforced in a court of competent jurisdiction;
3. In accordance with the Constitution and this Agreement, if at any time the balance standing to the Employer's credit in the reserve for employer contributions and benefit payments is insufficient to pay all service benefits due and payable to the entity's retirees and beneficiaries, the Employer agrees and covenants to promptly remit to MERS the amount of such deficiency as determined by the Retirement Board within thirty (30) days notice of such deficiency.
4. The Employer acknowledges that wage and service reports are due monthly, and the employee contributions (if any) and Employer contributions are due and payable monthly, and must be submitted in accordance with the MERS Enforcement Procedure for Prompt Reporting and Payment, the terms of which are incorporated herein by reference.
5. Should the Employer fail to make its required contribution(s) when due, the retirement benefits due and payable by MERS on behalf of the entity to its retirees and beneficiaries may be suspended until the delinquent payment is received by MERS. MERS may implement any applicable interest charges and penalties pursuant to the MERS Enforcement Procedure for Prompt Reporting and Payment and Plan Document Section 79, and take any appropriate legal action, including but not limited to filing a lawsuit and reporting the entity to the Treasurer of the State of Michigan in accordance with MCL 141.1544(d), Section 44 of PA 436 of 2012, as may be amended.
6. The Employer acknowledges that changes to the Employer's MERS Defined Benefit Plan must be made in accordance with the MERS Plan Document and applicable law, and agrees that MERS will not administer any such changes unless the MERS Plan Document and applicable law permit same, and MERS is capable of administering same.

Defined Benefit Plan Adoption Agreement

VIII. Execution

Authorized Designee of Governing Body of Municipality or Chief Judge of Court

The foregoing Adoption Agreement is hereby approved by Muskegon City Council on
the _____ day of _____, 20_____.
(Name of Approving Employer)

Authorized signature: _____

Title: _____

Witness signature: _____

Received and Approved by the Municipal Employees' Retirement System of Michigan

Dated: _____, 20____ Signature: _____
(Authorized MERS Signatory)



CBIZ Retirement Plan Services

CBIZ Benefits & Insurance Services, Inc.
17199 Laurel Park North, Ste. 405
Livonia, MI 48152
<http://retirement.cbiz.com>

Municipal Employees' Retirement System of Michigan

**Muskegon, City of (6116)
Division 12
Retirement Plan Options**



January 6, 2017

In care of:
Municipal Employees' Retirement
System of Michigan
1134 Municipal Way
Lansing, Michigan 48917

The purpose of this report is to show the financial implications to the employer of different retirement plan design options for Muskegon, City of (6116) – Division 12. The report consists of separate sections that correspond to the different plan options under consideration. In addition, there is an executive summary at the beginning of the report that summarizes all the options under consideration and shows the results for each option in graphical form, if multiple options are requested. Each section contains the following additional detail:

- An executive summary that describes the plan provisions and provides a brief explanation of the results.
- An exhibit showing the short-term impact of the proposed benefit change – that is, the impact on next year's contribution (this exhibit is only shown for supplemental valuations and supplemental valuations with bridge benefits).
- An exhibit showing the long term contribution impact of the proposed benefit change (i.e. a projection of the Actuarial Accrued Liabilities, Valuation Assets, funded ratio, and employer contributions under both the current and proposed plans).
- A graph showing the projected funded ratio and employer contribution under both the current and proposed plans.

This report should not be relied upon for any other purpose. Reliance on information contained in this report by anyone for anything other than the intended purpose could be misleading.

The information in this report is purely actuarial in nature. It is not intended to serve as a substitute for legal, accounting, and investment advice.

This report was prepared at the request of MERS and the municipality and may be provided only in its entirety by the municipality to other interested parties. CBIZ Retirement Plan Services is not responsible for the consequences of any unauthorized use.

Please see the Comments on Asset Smoothing in the annual valuation report.

Please refer to the following sections of this report for additional information:

- Risk Characteristics of Defined Benefit Plans
- Important Comments
- Miscellaneous and Technical Assumptions



CBIZ Retirement Plan Services

CBIZ Benefits & Insurance Services, Inc.
17199 Laurel Park North, Ste. 405
Livonia, MI 48152
<http://retirement.cbiz.com>

The undersigned are members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

If you need further information to make an informed decision, please contact MERS at (800) 767-6377 for assistance.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Nagy".

Cathy Nagy, FSA, MAAA
Actuary

A handwritten signature in cursive script that reads "Curt Powell".

Curt Powell, EA, MAAA
Senior Analyst



TABLE OF CONTENTS

Page Number

Option 1 - Supplemental Valuation Results – Bridged Benefits	5 – 9
Risk Characteristics of Defined Benefit Plans	10
Important Comments	11-12
Miscellaneous and Technical Assumptions	13



CBIZ Retirement Plan Services

CBIZ Benefits & Insurance Services, Inc.
17199 Laurel Park North, Ste. 405
Livonia, MI 48152
<http://retirement.cbiz.com>

Option 1
Supplemental Valuation Results
Bridged Benefits



Executive Summary

The purpose of this report is to show the impact on the liabilities and contributions of the proposed benefit changes for Muskegon, City of (6116), Division 12. The following proposed benefit changes have been considered:

Division	Proposed Change in Benefit
DPW 517M (12)	Bridged Benefit: 2.25% - for service prior to January 1 2017, Frozen FAC 2.00% - for service after January 1, 2017 Maximum Benefit: 80% FAC at Termination of Employment Employee Contribution: 5.00%

The results of our calculations are shown as follows:

- **Baseline:** This is the current DB plan.
- **Option 1:** Bridged benefit with frozen FAC.
- The exhibit immediately following this page shows the short term impact of the proposed benefit change (ie the change in the Actuarial Accrued Liability [AAL] as of December 31, 2015 and the change in the employer contribution for the fiscal year beginning July 1, 2017).
- In order to illustrate the long-term impact of the proposed benefit change, we are also showing projections under both the current and the proposed benefits. The projection results are illustrated both in tabular and graphical form.

Please note the following regarding these calculations:

- The option would change both the AAL and the Normal Cost. The change in AAL will be recognized over 7 years. The employer Normal Cost is the cost to provide benefits accrued each year. In the long run, the employer is expected to pay the Normal Cost, if all the actuarial assumptions are met in the future.
- Under **Option 1** (bridged benefit with frozen FAC) there is an immediate impact on the unfunded accrued liability (UAL) because the Final Average Compensation (FAC) for current active members is frozen. This results in the largest part of the decrease in the employer contribution.
- Because the proposed benefit change results in a reduction in employer contributions, under the MERS funding policy, the impact of the change is recognized over a period of time (i.e. the change in the AAL is amortized over a fixed period).



Muskegon, City of (6116) - DPW 517M (Division 12)
Employer Computed Contributions - Based on 12/31/2015 Actuarial Valuation

	Current Benefits	Proposed Benefits	Difference
1. Benefits			
a) Benefit Formula	2.25% Mult. (80% Max)	Bridged Benefit**	Bridged Benefit**
b) Normal Retirement Age	60	60	
c) Vesting Provision	V-10	V-10	
d) F50 Retirement Condition	-	-	
e) F55 Retirement Condition	F55(30)	F55(30)	
f) F(N) Retirement Condition	-	-	
g) Rule of X	-	-	
h) FAC Period	FAC - 3	FAC - 3	
i) RS50 Percent	50%	50%	
j) DROP+	-	-	
k) D-2	D-2 (25%)	D-2 (25%)	
l) Benefit E	-	-	
m) Benefit E1	-	-	
n) Benefit E2	-	-	
o) Load for Sick Leave in FAC	-	-	
p) Member Contribution Rate	5.00%	5.00%	12.00%
2. Member Counts			
a) Active	30	30	0
b) Retired	28	28	0
c) Vested Former Members	4	4	0
d) Total	62	62	0
3. Annual Payroll	\$ 1,298,221	\$ 1,298,221	\$ -
4. Actuarial Value of Assets	\$ 11,929,963	\$ 11,929,963	\$ -
5. Actuarial Accrued Liability			
a) Active	\$ 5,377,019	\$ 4,398,051	\$ (978,968)
b) Retired	7,720,269	7,720,269	0
c) Vested Former Members	390,982	390,982	0
d) Pending Refunds	41,258	41,258	0
e) Total	\$ 13,529,528	\$ 12,550,560	\$ (978,968)
6. Unfunded Accrued Liability (UAL) (5e - 4)	\$ 1,599,565	\$ 620,597	\$ (978,968)
7. Division Percent Funded (4 / 5e)	88.2 %	95.1 %	6.9 %
8. Annual Employer Cost			
a) Employer Normal Cost	\$ 71,580	\$ 57,456	\$ (14,124)
b) Amortization of UAL*	214,128	64,668	(149,460)
c) Total Employer Contribution \$ (8a + 8b)	\$ 285,708	\$ 122,124	\$ (163,584)

* The amortization period is 9 years if the UAL is positive, and 10 years if the UAL is negative, as of the beginning of the fiscal year for which the contribution is being calculated.

** Bridged Benefit: 2.25% - for service prior to January 1, 2017, Frozen FAC
 2.00% - for service after January 1, 2017
 Maximum Benefit: 80% FAC at Termination of Employment

^ Please note the new assumptions will be phased in over a 5 year period. The results shown do not reflect any phase-in of the new assumptions.

This report may be provided to other interested parties only in its entirety and only with the prior permission of MERS and the municipality.



**Municipal Employees Retirement System of Michigan
 Muskegon, City of (6116) - DPW 517M (Division 12)
 10 Year Projections of Employer Contributions and Funded Ratios**

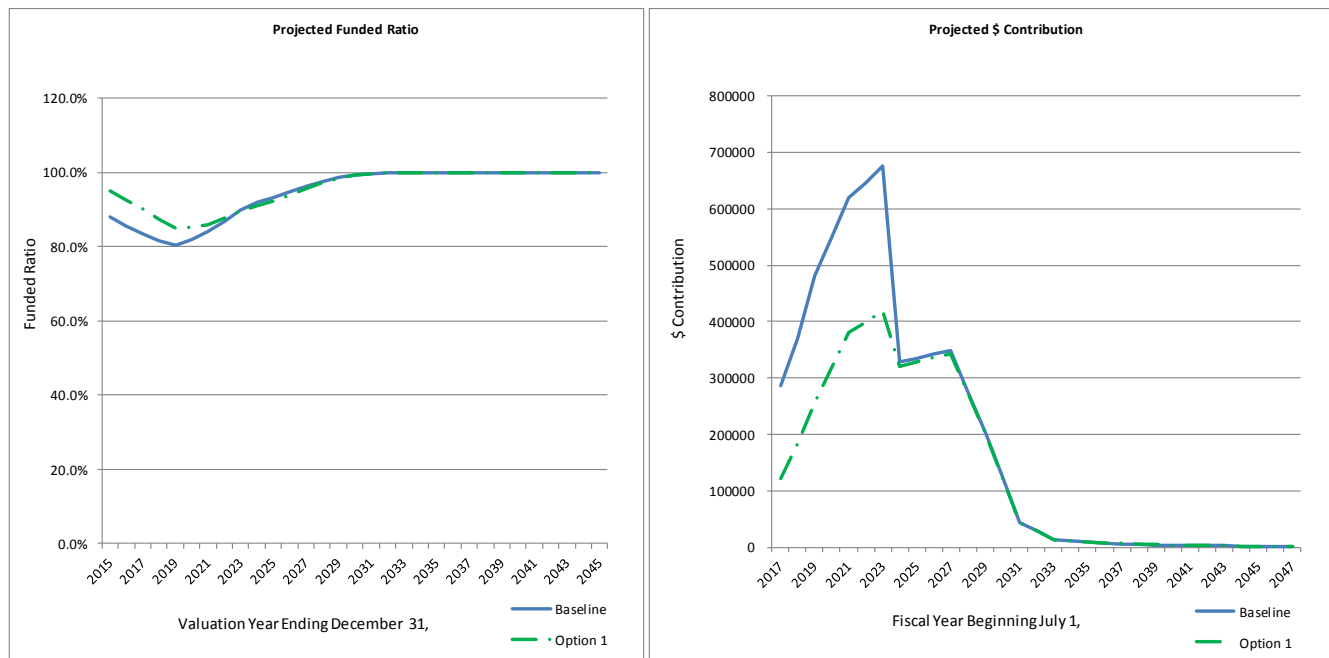
		Baseline					Option 1 - Bridged to a 2.00% Multiplier (Frozen FAC)				
Valuation	Fiscal Year	Actuarial Accrued Liability	Valuation Assets	Funded Ratio	Total Employer Contribution	Total Employer	Actuarial Accrued Liability	Valuation Assets	Funded Ratio	Total Employer Contribution	Total Employer
Year Ending December 31,	Beginning July 1,				Inflated Dollars	Contribution Current Dollars				Inflated Dollars	Contribution Current Dollars
2015	2017	13,530,000	11,930,000	88%	286,000	286,000	12,551,000	11,930,000	95%	122,000	122,000
2016	2018	13,920,000	11,919,000	86%	372,000	359,000	12,850,000	11,919,000	93%	184,000	177,000
2017	2019	14,307,000	11,937,000	83%	481,000	447,000	13,140,000	11,847,000	90%	256,000	238,000
2018	2020	14,665,000	11,977,000	82%	548,000	491,000	13,396,000	11,695,000	87%	318,000	285,000
2019	2021	15,010,000	12,078,000	80%	619,000	534,000	13,634,000	11,571,000	85%	380,000	328,000
2020	2022	15,345,000	12,590,000	82%	645,000	537,000	13,857,000	11,818,000	85%	398,000	331,000
2021	2023	15,657,000	13,148,000	84%	675,000	541,000	14,060,000	12,095,000	86%	420,000	337,000
2022	2024	15,941,000	13,832,000	87%	329,000	254,000	14,238,000	12,474,000	88%	320,000	247,000
2023	2025	16,200,000	14,555,000	90%	335,000	250,000	14,393,000	12,870,000	89%	328,000	244,000
2024	2026	16,433,000	15,127,000	92%	342,000	246,000	14,525,000	13,222,000	91%	336,000	241,000
2025	2027	16,627,000	15,513,000	93%	348,000	241,000	14,621,000	13,511,000	92%	343,000	237,000

Notes:

- (1) The Actuarial Accrued Liability, Valuation Assets, and Funded Ratio are calculated as of December 31.
 (2) Contributions are calculated for the applicable fiscal year.
 (3) The impact of the assumptions change will be phased-in over a 5 year period. This phase-in has not been reflected in the Baseline or Option 1.



**Municipal Employees' Retirement System of Michigan
 Muskegon, City of (6116) - DPW 517M (Division 12)**



Baseline - Current plan
 Option 1 - Bridged to a 2.00% Multiplier (Frozen FAC)

Comments:

·In the long run, the employer contribution will trend towards the long term cost of the different benefit structures. The long term cost of the various benefit structures expressed as a percent of pay is shown in the table below:

	Baseline	Option 1
Total long term cost	10.96%	9.78%
Employee contribution	5.00%	5.00%
Employer long term cost	5.96%	4.78%

·Under Option 1 there is a decrease in the employer contribution as a result of the lower multiplier.
 ·Under Option 1 there is an immediate impact on the UAL (unfunded accrued liability) because the FAC for the current active members is frozen.



CBIZ Retirement Plan Services

CBIZ Benefits & Insurance Services, Inc.
17199 Laurel Park North, Ste. 405
Livonia, MI 48152
<http://retirement.cbiz.com>

Risk Characteristics of Defined Benefit Plans

It is important to understand that retirement plans, by their nature, are exposed to certain risks. While risks cannot be eliminated entirely, they can be mitigated through various strategies. Below are a few examples of risk (this is not an all-inclusive list):

- Economic - investment return, wage inflation, etc.
- Demographic - longevity, disability, retirement, etc.
- Plan Sponsor and Employees - contribution volatility, attract/retain employees, etc.

The MERS Retirement Board adopts certain assumptions and methods to mitigate the economic and demographic risks, and the contribution volatility risks. For example, the investment risk is the largest economic risk and is mitigated by having a balanced portfolio and a clearly defined investment strategy. Demographic risks vary based on the age of the workforce and are mitigated by preparing special studies called experience studies on a regular basis to determine if the assumptions used are reasonable compared to the experience. Risk may be mitigated through a plan design that provides benefits that are sustainable in the long run. An Experience Study is completed every five years to review the assumptions and methods. The next Experience Study will be completed in 2020.



Important Comments

1. The results are based on information provided by the municipality and MERS. The actuary is unaware of any additional information that would impact these results.
2. This report describes the financial effect of the proposed benefit plan. No statement contained within is a recommendation in favor of or in opposition to the proposed benefit plan.
3. The reader of this report should keep in mind that actuarial calculation are mathematical estimates based on current data and assumptions of future events (which may or may not materialize). As a result, actuarial calculations can and do vary from one valuation year to the next, sometimes significantly if the group valued is very small (less than 30 lives). The cost impact of a benefit change may fluctuate over time, as the demographics of the group changes.
4. The calculations in this report were prepared based on December 31, 2015, demographic and financial information unless noted elsewhere in the report.
5. The valuation date is December 31, 2015.
6. Please note, the assumptions and methods used in these calculations are consistent with those used in the December 31 2015, Annual Actuarial Valuation (except where noted otherwise) and are summarized in an Appendix. This Appendix is located on the MERS website at www.mersofmich.com.
7. In the event that more than one plan change is being considered, the user of this report should remember that the results of separate actuarial valuations cannot be added together. The total can be considerably greater than the sum of the parts due to the interaction of various plan provisions with each other and with the assumptions used.
8. Retirement benefits and employer contributions are based on a percentage of members' reported pay for open divisions. If actual reported payroll differs substantially from payroll used in this report, the dollar contribution should be adjusted proportionately.
9. For retiree only divisions or divisions whose new hires go into Defined Contribution, the Retirement Board has adopted the "Amortization Policy for Closed Divisions within Open Municipalities." This policy accelerates the payment of the unfunded accrued liability.



CBIZ Retirement Plan Services

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<http://retirement.cbiz.com>

10. The following information, assumptions and funding methods were used in the projections under the various options:
 - a. Demographic, financial information and benefit provisions provided by MERS for the December 31, 2015 annual valuation.
 - b. The assumptions and methods used in the December 31, 2015 annual valuation, except where noted otherwise.
 - c. All demographic assumptions will be met during the projection period.
 - d. The active population is assumed to remain stable during the projection period.
 - e. Demographic assumptions under the DC plan are unchanged from those of the DB plan.
 - f. The Market Value of Assets will earn the assumed investment return each year during the projection period.
 - g. There will be no benefit changes during the projection period.
 - h. The employer contributions through June 30, 2017 are not affected, and are based on previous annual actuarial valuations.
11. The results do not show the potential impact on other post-employment benefits (such as retiree health care insurance) or ancillary benefits (such as life insurance).
12. If the user of this report is not sure how to interpret certain results in the report or how to read the report, they should contact MERS at (800) 767-6377 before relying on the results of this report.
13. Additional disclosures required by Actuarial Standard of Practice:
 - All actuarial calculations have been prepared in conformity with generally accepted actuarial principles and practices and with the Actuarial Standards of Practice issued by the Actuarial Standards Board.
 - The valuation was based upon information furnished by the municipality and MERS staff. We checked for internal and year to year consistency, but did not otherwise audit the data. CBIZ Retirement Plan Services is not responsible for the accuracy or completeness of the information provided for the preparation of these calculations.



CBIZ Retirement Plan Services

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Miscellaneous and Technical Assumptions

1. The results in this report are based on the assumptions used in the December 31, 2015 annual valuation.
2. FAC Load – 2%
3. Withdrawal Scaling Factor – 92%

Commission Meeting Date: January 24, 2017

Date: January 17, 2017
To: Honorable Mayor and City Commissioners
From: Finance
RE: Corrections to 2017 Fee Schedule Department Comments

SUMMARY OF REQUEST: To approve the changes noted (highlighted in yellow) on the attached page 9 of the 2017 Master Fee Schedule to correct or clarify Department Comments related to the Rental Department.

FINANCIAL IMPACT: None as this request is to change or correct the comments only.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To approve the attached Department Comments changes noted for the Rental Department for the 2017 Master Fee Schedule.

CITY OF MUSKEGON								
Master Fee Resolution - Schedule of Fees								
(Effective 1/1/2017)								
				2015	2015	2016	2017	DEPARTMENT
	DEPT	DESCRIPTION	UNIT	FEE eff 1/1	FEE eff 7/1	FEE	FEE	COMMENTS
185	CITY-CODE COMPLIANCE	VACANT BUILDING ADMINISTRATIVE APPEAL FEE (31-60 DAYS LATE)	OCCURRENCE	25.00	25.00	25.00	25.00	NON-REFUNDABLE FEE
186	CITY-CODE COMPLIANCE	VACANT BUILDING ADMINISTRATIVE APPEAL FEE (61-90 DAYS LATE)	OCCURRENCE	35.00	35.00	35.00	35.00	NON-REFUNDABLE FEE
187	CITY-CODE COMPLIANCE	VACANT BUILDING REGISTRATION - FORMAL APPEAL FEE	OCCURRENCE	50.00	50.00	50.00	50.00	NON-REFUNDABLE FEE
188	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY REGISTRATION PER PARCEL (ANNUAL)	SINGLE UNIT	25.00	35.00	35.00	70.00	INCLUDES ONE INSPECTION EVERY 4 YEARS FOR COMPLIANCE
189	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY REGISTRATION PER PARCEL (ANNUAL)	DUPLEX	30.00	40.00	40.00	80.00	INCLUDES ONE INSPECTION EVERY 4 YEARS FOR COMPLIANCE
190	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY REGISTRATION (ANNUAL - BASE)	3 UNITS	40.00	50.00	50.00	100.00	INCLUDES ONE INSPECTION EVERY 4 YEARS FOR COMPLIANCE
191	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY REGISTRATION (ANNUAL - PER PARCEL OVER 3)	PER UNIT OVER 3	5.00	5.00	5.00	10.00	INCLUDES ONE INSPECTION EVERY 4 YEARS FOR COMPLIANCE
192	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY INSPECTION (INSPECTION NO-SHOW FIRST TIME OR LATE CANCELLATION)	PER UNIT	60.00	60.00	60.00	65.00	FEE ASSESSED FOR NO-SHOW/LOCK OUT OR LATE CANCELLATION
193	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY INSPECTION CANCELLATION FEE	OCCURRENCE	50.00	50.00	50.00	65.00	FEE ASSESSED WHEN A 3RD CANCELLATION IS RECEIVED BY CUSTOMER OR AGENT
194	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY INSPECTION CANCELLATION FEE (STARTING WITH 4TH CANCELLATION)	OCCURRENCE	10.00	10.00	10.00	15.00	ADDED TO BASE CANCELLATION FEE; EACH CANCELLATION INSTANCE WILL CAUSE FEE TO INCREASE BY AN ADDITIONAL \$15.00
195	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY INSPECTION (INSPECTION NO-SHOW EACH ADDT'L TIME OR LATE CANCELLATION)	PER UNIT	15.00	15.00	15.00	20.00	ADDED TO BASE NO SHOW FEE; EACH NO SHOW INSTANCE WILL CAUSE INSPECTION FEE TO INCREASE BY AN ADDITIONAL \$20.00
196	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY INSPECTION NON-COMPLIANCE FEE (2ND REINSPECTION)	PER UNIT	35.00	35.00	35.00	40.00	FEE TO BE ASSESSED TO PROPERTIES NOT BROUGHT INTO COMPLIANCE AFTER THE FIRST INSPECTION
197	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY INSPECTION NON-COMPLIANCE FEE (STARTING WITH 3RD COMPLIANCE REINSPECTION)	PER UNIT	10.00	10.00	10.00	15.00	ADDED TO BASE NON-COMPLIANCE FEE; EACH REINSPECTION INSTANCE WILL CAUSE NON-COMPLIANCE FEE TO INCREASE BY AN ADDITIONAL \$15.00
198	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY EXTERIOR ONLY REINSPECTION FEE (1ST EXTERIOR ONLY REINSPECTION)	PER UNIT	30.00	30.00	30.00	35.00	FEE ASSESSED TO PROPERTIES IN COMPLIANCE INTERIOR REQUIREMENTS BUT NOT IN COMPLIANCE WITH EXTERIOR REQUIREMENTS BY FIRST INSPECTION
199	PUBLIC SAFETY - RENTAL	RENTAL PROPERTY EXTERIOR ONLY REINSPECTION FEE (STARTING WITH 2ND EXTERIOR ONLY REINSPECTION)	PER UNIT	10.00	10.00	10.00	15.00	ADDED TO BASE EXTERIOR NON-COMPLIANCE FEE; EACH REINSPECTION INSTANCE WILL CAUSE EXTERIOR NON-COMPLIANCE FEE TO INCREASE BY AN ADDITIONAL \$15.00
200	PUBLIC SAFETY - RENTAL	LATE FEE FOR NON-PAYMENT OF RENTAL REGISTRATION ANNUAL FEE	EACH PROPERTY VIOLATION	75.00	75.00	75.00	10.00	FEE CHARGED AFTER 30 DAYS
201	PUBLIC SAFETY - RENTAL	HOUSING-WARRANT INSPECTION FEE	EACH	150.00	150.00	150.00	150.00	
202	ENV SERVICES	BOARD UP'S - FIRST 5 BOARDS	PER INSTANCE	40.00	40.00	40.00	40.00	PLUS THE COST OF THE CONTRACTOR TO DO THE BOARD UP
203	ENV SERVICES	BOARD UP'S - 6 OR MORE BOARDS	PER INSTANCE	0.00	0.00	60.00	60.00	PLUS THE COST OF THE CONTRACTOR TO DO THE BOARD UP
204	ENV SERVICES	ADMINISTRATIVE OVERHEAD ON DEMOLITIONS	PER UNIT	10.0%	10.0%	15.0%	15.0%	BASED ON THE CONTRACTORS PRICE TO DEMOLISH

Commission Meeting Date: January 24, 2017

Date: January 19, 2017
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing – Establishment of a Commercial Redevelopment District – 878 Jefferson St, Suite 1

SUMMARY OF REQUEST:

Pursuant to Public Act 255 of 1978, as amended, Gunter Properties, LLC has requested the establishment of a Commercial Redevelopment District. The creation of the district will allow the building owner to apply for a Commercial Facilities Exemption Certificate, which will freeze the taxable value of the building and exempt the new real property investment from local taxes. The district would only cover one suite in the building.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Establishment of the Commercial Redevelopment District.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING THE CREATION OF A COMMERCIAL REDEVELOPMENT DISTRICT
878 Jefferson St, Suite 1**

WHEREAS, pursuant to PA 255 of 1978, the City of Muskegon has the authority to establish "Commercial Redevelopment Districts" within the City of Muskegon at request of a commercial business enterprise or on its own initiative; and

WHEREAS, Gunter Properties, LLC has filed a written request with the clerk of the City of Muskegon requesting the establishment of the Commercial Redevelopment District for an area in the vicinity of 878 Jefferson St, Suite 1 located in the City of Muskegon hereinafter described; and

WHEREAS, the City Commission of the City of Muskegon determined that the district meets the requirements set forth in section 5 of PA 255 of 1978; and

WHEREAS, written notice has been given by certified mail to all owners of real property located within the proposed district as required by section 5(3) of PA 255 of 1978; and

WHEREAS, on January 24, 2017 a public hearing was held and all residents and taxpayers of the City of Muskegon were afforded an opportunity to be heard thereon; and

WHEREAS, the City of Muskegon deems it to be in the public interest of the City of Muskegon to establish the Commercial Redevelopment District as proposed;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Muskegon that the following described parcel(s) of land situated in the City of Muskegon, County of Muskegon, and State of Michigan, to wit:

CITY OF MUSKEGON JEFFERSON PROFESSIONAL CONDOMINIUM UNIT 1 SBJT TO OVERHEAD
ELECTRIC LN ESMNT L3815 P882

Adopted this 24 Day of January 2017

Ayes:

Nays:

Absent:

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on January 24, 2017.

Ann Meisch
Clerk



Application for Commercial Rehabilitation Exemption Certificate

General Description of the Facility

- Unit 1 of the Jefferson Professional Condominium Association. This building is a single story commercial building built around 1927. Originally the space was used as part of the Terminal Building or Arcade building. Most recently the space was an eye doctors office but it has sat vacant for 20+ years. The entire building is 16,128 sq ft of which Unit 1 is 2,833.50 sq ft.

General Description of Rehabilitated Use

- The proposed use of the space will be retail and manufacturing. Currently the tenant planning to move in will move embroidery production to 50% of the space and retail sales to 50%. The company is currently operating out of North Muskegon and would like to move downtown

Description of General nature and extent of Rehabilitation

- The following steps will be taken to rehab the space. First, full demolition to the outside wall studs and to the highest extent of the ceiling. Then all electrical, plumbing and HVAC will be replaced. New insulation will be added above the ceiling and throughout exterior walls. New flooring throughout. Lastly, we will add back in 2 original window locations that have since been blocked and cover. This will improve street appeal and traffic.

List of the Fixed Building Equipment

- The only new fixtures will be a new electrical box/meter, 2 new windows and a new front entrance door (with vestibule).

Time Schedule

- This work will be scheduled to be completed at the earliest possible date. The hope is to complete rehabilitation by January 31st 2017.



Application for Commercial Rehabilitation Exemption Certificate

Economic Advantages

- The remodeled space will generate additional employment in the City of Muskegon. The space will also provide an added retail presence and traffic for neighboring businesses.

Legal Description (from Property Tax bill)

- City of Muskegon
- Jefferson Professional Condominium
- Unit 1

Commission Meeting Date: January 24, 2017

Date: January 19, 2017
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing – Issuance of a Commercial Facilities Exemption Certificate – 878 Jefferson St, Suite 1

SUMMARY OF REQUEST:

Pursuant to Public Act 255 of 1978, as amended, Gunter Properties, LLC has requested the issuance of a Commercial Facilities Exemption Certificate. The certificate will freeze the taxable value of the building and exempt the new real property investment from local and state taxes. The company will be investing \$100,000 and creating five job, which qualifies them for an abatement of 9 years.

FINANCIAL IMPACT:

The real property taxes would be frozen at their pre-rehabilitated rate for the duration of the certificate

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Issuance of the Commercial Facilities Exemption Certificate

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING APPLICATION FOR ISSUANCE
OF A COMMERCIAL FACILITIES EXEMPTION CERTIFICATE
*Gunter Properties, LLC***

WHEREAS, the City of Muskegon legally established the Commercial Redevelopment District, 878 Jefferson, Suite 1 District, after a public hearing held on January 24, 2017; and

WHEREAS, the state equalized value of the property proposed to be exempt plus the aggregate state equalized value of property previously exempt and currently in force under Public Act 255 of 1978 and under Public Act 198 of 1974 (IFT's) does not exceed 5% of the total state equalized value of the City of Muskegon; and

WHEREAS, the application was approved at a public hearing as provided by section 6(2) of Public Act 255 of 1978 on January 24, 2017; and

WHEREAS, Gunter Properties, LLC is not delinquent in any taxes related to the facility; and

WHEREAS, the application is for commercial property as defined in section 3(3) of Public Act 255 of 1978; and

WHEREAS, Gunter Properties, LLC had provided answers to all required questions under Section 6(1) of PA 255 of 1978 to the City of Muskegon; and

WHEREAS, the City of Muskegon requires that the construction, restoration or replacement of the facility shall be completed by January 24, 2019; and

WHEREAS, the Commercial Facilities Exemption Certificate is granted for a period of nine (9) years and no extensions will be allowed; and

WHEREAS, the commencement of the construction, restoration or replacement of the facility did not occur more than 45 days prior to the filing of the application for exemption; and

WHEREAS, the commencement of the construction, restoration or replacement of the facility did not occur prior to the establishment of the Commercial Redevelopment District; and

WHEREAS, the application relates to a construction, restoration or replacement program which when completed constitutes a new, replacement or restored facility within the meaning of Public Act 255 of 1978 and that is situated within a Commercial Redevelopment District established under Public Act 255 of 1978; and

WHEREAS, completion of the facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to increase commercial activity, create employment, retain employment and prevent a loss of employment in the community in which the facility is situated; and

WHEREAS, the restoration includes improvements aggregating 10% or more of the true cash value of the property at commencement of the restoration as provided by section 4(6) of Public Act 255 of 1978.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City Commission
Be and hereby is granted a Commercial Facilities Exemption for the real property, excluding land, located in Commercial Redevelopment District, 878 Jefferson. Suite 1 District at 878 Jefferson St, Suite 1 for a

period of nine (9) years, beginning December 31, 2017, and ending December 30, 2026, pursuant to the provisions of PA 255 of 1978, as amended.

Adopted this 24th Day of January, 2017.

Ayes:

Nays:

Absent:

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on January 24, 2017.

Ann Meisch
Clerk

Commission Meeting Date: January 24, 2017

Date: January 25, 2017
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing – Establishment of a Commercial Redevelopment District – 275 W Clay Ave

SUMMARY OF REQUEST:

Pursuant to Public Act 255 of 1978, as amended, Berkshire Muskegon LDHA, LLC has requested the establishment of a Commercial Redevelopment District. The creation of the district will allow the building owner to apply for a Commercial Facilities Exemption Certificate, which will provide a 50% reduction in the number of mills levied as ad valorem taxes, excluding the State Education Tax.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Establishment of the Commercial Redevelopment District.

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING THE CREATION OF A COMMERCIAL REDEVELOPMENT DISTRICT
275 W Clay Ave**

WHEREAS, pursuant to PA 255 of 1978, the City of Muskegon has the authority to establish "Commercial Redevelopment Districts" within the City of Muskegon at request of a commercial business enterprise or on its own initiative; and

WHEREAS, Berkshire Muskegon LDHA, LLC has filed a written request with the clerk of the City of Muskegon requesting the establishment of the Commercial Redevelopment District for an area in the vicinity of 275 W Clay Ave located in the City of Muskegon hereinafter described; and

WHEREAS, the City Commission of the City of Muskegon determined that the district meets the requirements set forth in section 5 of PA 255 of 1978; and

WHEREAS, written notice has been given by certified mail to all owners of real property located within the proposed district as required by section 5(3) of PA 255 of 1978; and

WHEREAS, on January 24, 2017 a public hearing was held and all residents and taxpayers of the City of Muskegon were afforded an opportunity to be heard thereon; and

WHEREAS, the City of Muskegon deems it to be in the public interest of the City of Muskegon to establish the Commercial Redevelopment District as proposed;

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Muskegon that the following described parcel(s) of land situated in the City of Muskegon, County of Muskegon, and State of Michigan, to wit:

CITY OF MUSKEGON REVISED PLAT 1903 LOTS 1-3 & LOTS 10-12 INCL BLK 328 ELY 198 FT
VAC ALLEY

Adopted this 24 Day of January 2017

Ayes:

Nays:

Absent:

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon City Commission, County of Muskegon, Michigan, at a regular meeting held on January 24, 2017.

Ann Meisch
Clerk

Berkshire – Muskegon Senior Apartment Community
275 West Clay Avenue
Muskegon, MI 49440

Project Overview

General Capital is proposing to construct a mixed use senior housing facility at the corner of 1st and Clay Avenue in Downtown Muskegon. The three-story facility will include approximately 4,000 square feet of commercial space fronting Clay Street with 84 units of senior housing above. A total of 72 parking spaces will be provided, including 54 underground and 18 surface parking spaces. In addition, approximately 23 on-street parking spaces will serve the project. The leasing center and management office will be located in ground floor commercial space facing Webster Avenue.

Description of Berkshire – Muskegon Commercial Space Including Fixed Building Equipment

The commercial portion of the building is 4,150 SF and is located at the northeast corner of the building. The commercial space will be delivered in a “white box” state to the future tenant. The space will include the following base improvements: interior vestibule with interior glass doors, a mens restroom consisting of one bathroom stall, one urinal and a sink, a womens restroom consisting of two bathroom stalls and a sink, demising of a main dining area for future cafe, demising for a kitchen area with commercial hood (all equipment will be FFE by tenant) and demising of a meeting space that will be retained by the Berkshire project. The space will include all mechanicals and basic distribution to heat and cool the space, a 400 amp electrical panel and basic outlets to meet code, basic 2x4 drop in light fixtures in an acoustical ceiling. Plumbing will include all fixtures in the restrooms and rough-ins for a 3-basin commercial sink and handwashing station (fixtures to be provided by tenant). The space will be fully sprinklered.

Economic Impact

The Berkshire – Muskegon will have direct and tangible positive impacts on the City of Muskegon on several levels. First, there are the direct and indirect economic benefits produced through job creation and retention. The development of affordable housing creates both immediate and long-term employment opportunities and spending in the local economy. Research consistently shows that developing affordable housing creates jobs – both during construction and through new consumer spending after the units have been occupied. The impacts of building affordable housing are on par with the impacts of constructing comparable market-rate units.

Using the same model that hundreds of local jurisdictions have used to quantify the local economic impact of affordable housing (a model produced and published in 2010 and updated in 2015 by the National Association of Home Builders¹), we expect the Berkshire – Muskegon to generate approximately 126 jobs through direct and indirect construction spending as well as “ripple effect” jobs produced by the project. Beyond the initial construction period, the annually recurring economic impacts produced by the project include approximately \$5.8 million in direct local

income, \$290,000 in taxes and local revenue for local governments and 35 local jobsⁱⁱ. The NAHB estimates these impacts as the ongoing, annual local economic impacts that result from the new apartments being occupied and the occupants participating in the local economy year after year (in other words, residents spend money locally, pay sales tax and the like).

The second significant economic impact produced by the project is the catalytic effect on the immediate neighborhood and Downtown Muskegon as a whole. The community has spent millions of dollars promoting downtown revitalization and has produced numerous plans documenting the community's vision for the area. The Berkshire – Muskegon is a clear and specific implementation of the community's plan and recently adopted Form Based Code. The City anticipates a positive impact on neighboring property values (including rental rates for commercial space) and an impetus for additional investment in the surrounding area.

Finally, the project will have the intangible economic benefit of providing safe, affordable housing for Muskegon's aging population. The City of Muskegon recognizes the need for additional affordable senior housing and fully endorses our application. Translated as an economic benefit, the project will have a stabilizing effect on Downtown by allowing residents to stay in their community after they sell their homes and on a long term basis, promoting community growth.

Project Sponsor

Berkshire -- Muskegon will benefit from the experience of General Capital, the project's sponsor. For more than fifteen years, General Capital has focused its housing development efforts on producing high quality affordable apartment communities. In 2003, General Capital was the proud recipient of the national Charles Edson Tax Credit Excellence Award for the Berkshire -- Grafton. This award serves as testimony to a commitment to providing high quality affordable housing. The group has successfully placed in service LIHTC deals in Wisconsin, Illinois and Pennsylvania. Since 2000, the group has closed 17 LIHTC transactions as a General Partner or turn-key fee developer (mostly for non-profit clients). General Capital is currently completing construction on two 9% LIHTC transactions. This year the group received two 9% LIHTC awards. One for the acquisition and rehabilitation of a multifamily project based Section 8 complex in Fond Du Lac, Wisconsin. The other is the group's first award of 9% LIHTC in Michigan for the construction of a Berkshire independent senior building in Paw Paw. The group's projects have included the construction of senior and workforce housing as well as the preservation of Rural Development, Section 8 subsidized projects and bringing market rate complexes into the LIHTC program. The downtown location of the Berkshire – Muskegon is an excellent match for General Capital's team. We have developed a good relationship with the municipality and look forward to working with MSHDA to implement our proposed project.

Legal Description

Lots 1 through 3, inclusive, and Lots 10 through 12, including the Easterly 198 feet of vacated alley, Block 328, Revised Plat of 1903 in the City of Muskegon, as recorded in Liber 3 of Plats, Page 71, Muskegon County Records.

Timeline

3/1/17 - Construction Commences

2/28/18 - CO Issued

4/1/18 - Commercial Tenant Occupancy

Economic Advantages of Exemption

A property tax exemption will allow the property owner to attract a wider array of commercial tenants by reducing the expense burden on the project. Property taxes are built into the commercial rent structure and are paid (either directly or indirectly) by the tenant. By limiting the tax burden on the commercial space, the property owner can pass the savings directly to the commercial tenant. This increases the affordability of the space, which ultimately lowers the business owner's cost of doing business.

A property tax exemption will allow the property owner to increase investment in physical improvements in the property. By decreasing the property tax payment, the portion of the property's income required to cover expenses can be shifted to paying for additional improvements in the property (by allowing the property's income to cover a larger mortgage payment). This has a direct impact on the quality of the building.

A property tax exemption will increase the amount of money available to a commercial tenant for Tenant Improvements or "TI's". While the property owner will be able to spend more on the building "core and shell" as a result of the reduced tax burden, the individual commercial tenant will be able to spend more on interior improvements as a result of a lower rent payment.

A reduced property tax payment has a very direct pass-through benefit to Downtown customers and the community as a whole by increasing the commercial viability of the individual business. Lower operating costs will help any business improve the likelihood of their long-term success.

ⁱ "The Local Economic Impact of Typical Housing Tax Credit Developments," National Association of Home Builders, March 2010 issue

ⁱⁱ "The Economic Impact of Home Building in a Typical Local Area: Income, Jobs and Taxes Generated," National Association of Home Builders, April 2015 issue

Commission Meeting Date: January 24, 2017

Date: January 25, 2017
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Public Hearing – Issuance of a Commercial Facilities Exemption Certificate – 275 W Clay Ave

SUMMARY OF REQUEST:

Pursuant to Public Act 255 of 1978, as amended, Berkshire Muskegon LDHA, LLC has requested the issuance of a Commercial Facilities Exemption Certificate. The certificate provides a 50% reduction in the number of mills levied as ad valorem taxes, excluding the State Education Tax, for the commercial portion of the development. The company will be investing \$587,000 in the commercial space, which qualifies them for an abatement of seven (7) years. The total project costs, including the residential portion, are estimated at \$16,296,000.

FINANCIAL IMPACT:

The certificate provides a 50% reduction in the number of mills levied as ad valorem taxes, excluding the State Education Tax.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Issuance of the Commercial Facilities Exemption Certificate

COMMITTEE RECOMMENDATION:

None

Resolution No. _____

MUSKEGON CITY COMMISSION

**RESOLUTION APPROVING APPLICATION FOR ISSUANCE
OF A COMMERCIAL FACILITIES EXEMPTION CERTIFICATE
*Berkshire Muskegon LDHA, LLC***

WHEREAS, the City of Muskegon legally established the Commercial Redevelopment District, 275 W Clay District, after a public hearing held on January 24, 2017; and

WHEREAS, the state equalized value of the property proposed to be exempt plus the aggregate state equalized value of property previously exempt and currently in force under Public Act 255 of 1978 and under Public Act 198 of 1974 (IFT's) does not exceed 5% of the total state equalized value of the City of Muskegon; and

WHEREAS, the application was approved at a public hearing as provided by section 6(2) of Public Act 255 of 1978 on January 24, 2017; and

WHEREAS, Berkshire Muskegon LDHA, LLC is not delinquent in any taxes related to the facility; and

WHEREAS, the application is for commercial property as defined in section 3(3) of Public Act 255 of 1978; and

WHEREAS, Berkshire Muskegon LDHA, LLC had provided answers to all required questions under Section 6(1) of PA 255 of 1978 to the City of Muskegon; and

WHEREAS, the City of Muskegon requires that the construction, restoration or replacement of the facility shall be completed by January 24, 2019; and

WHEREAS, the Commercial Facilities Exemption Certificate is granted for a period of seven (7) years and no extensions will be allowed; and

WHEREAS, the commencement of the construction, restoration or replacement of the facility did not occur more than 45 days prior to the filing of the application for exemption; and

WHEREAS, the commencement of the construction, restoration or replacement of the facility did not occur prior to the establishment of the Commercial Redevelopment District; and

WHEREAS, the application relates to a construction, restoration or replacement program which when completed constitutes a new, replacement or restored facility within the meaning of Public Act 255 of 1978 and that is situated within a Commercial Redevelopment District established under Public Act 255 of 1978; and

WHEREAS, completion of the facility is calculated to, and will at the time of issuance of the certificate, have the reasonable likelihood to increase commercial activity, create employment, retain employment and prevent a loss of employment in the community in which the facility is situated; and

WHEREAS, the restoration includes improvements aggregating 10% or more of the true cash value of the property at commencement of the restoration as provided by section 4(6) of Public Act 255 of 1978.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City Commission
Be and hereby is granted a Commercial Facilities Exemption for the real property, excluding land, located
in Commercial Redevelopment District, 275 W Clay District at 275 W Clay Ave for a period of seven (7)
years, beginning December 31, 2017, and ending December 30, 2024, pursuant to the provisions of PA
255 of 1978, as amended.

Adopted this 24th Day of January, 2017.

Ayes:

Nays:

Absent:

BY: _____
Stephen J. Gawron
Mayor

ATTEST: _____
Ann Meisch
Clerk

CERTIFICATION

I hereby certify that the foregoing constitutes a true and complete copy of a resolution adopted by the Muskegon
City Commission, County of Muskegon, Michigan, at a regular meeting held on January 24, 2017.

Ann Meisch
Clerk

Commission Meeting Date: January 24, 2017

Date: January 17, 2017
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
**RE: Public Hearing - Request to Create a New Neighborhood
Enterprise Zone District at 275 W Clay Ave.**

SUMMARY OF REQUEST:

Pursuant to Public Act 147 of the Michigan Public Acts of 1992, Berkshire Muskegon LDHA, LLC has requested to create a new Neighborhood Enterprise Zone (NEZ) district for the parcel at 275 W Clay Ave for a mixed-use development.

FINANCIAL IMPACT:

For those properties that are approved for a NEZ Certificate, taxation will be levied using half of the State average of millages of local entities.

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To hold the public hearing.

COMMITTEE RECOMMENDATION:

None

Background

Properties located in NEZ districts are eligible to apply for NEZ certificates, which will lower the residential property taxes on new or rehab construction. The State requires that notices are to be sent to the local taxing jurisdictions regarding the request and that the resolution may not be passed until after 60 days of the notice letters being sent. Also, a public hearing must be held no more than 45 days after the notice is sent. Notices were mailed on December 13, 2016. The resolution is planned to come back in front of the City Commission on February 14, 2017. The NEZ will only affect the market-rate residential component of the project.

The City is allowed to designate up to 15% of its total area as NEZ designations, which calculates out to 2.802 square miles. The City currently has under 2.1 square miles designated as NEZ districts.

This project will include 84 units of senior housing. Sixty-Eight (68) of the units will be restricted by LIHTC and 16 units will be market-rate. The NEZ certificate would only affect the market-rate apartments. The project also includes 4,000 sf of commercial space on the first-floor fronting Clay Ave.

Date: January 24, 2017
To: Honorable Mayor and City Commissioners
From: City Clerk
RE: Community Relations Committee recommendations for
Various City Boards and Committees

SUMMARY OF REQUEST: Accept the recommendations from the Community Relations Committee.

Add the Business Improvement District to the Community Relations Index.

FINANCIAL IMPACT: None.

STAFF RECOMMENDATION: Approval

COMMITTEE RECOMMENDATION: As presented