# CITY OF MUSKEGON

## CITY COMMISSION MEETING

### JANUARY 22, 2019 @ 5:30 P.M.

### MUSKEGON CITY COMMISSION CHAMBERS

### 933 TERRACE STREET, MUSKEGON, MI 49440

## AGENDA

- □ **CALL TO ORDER:**
- □ **PRAYER:**
- □ **PLEDGE OF ALLEGIANCE:**
- □ **ROLL CALL:**
- □ **HONORS AND AWARDS:**
- □ **INTRODUCTIONS/PRESENTATION:**
- □ **CITY MANAGER'S REPORT:**
- □ **CONSENT AGENDA:**

  A. **Approval of Minutes** City Clerk

  B. **Adopt a Resolution Approving the Liquor License Application for Rake Beer Project, LLC** City Clerk

  C. **Citizen's Police Review Board By-laws Amendment** City Clerk

  D. **2019 Dozer Rental for Beach Leveling** Department of Public Works

  E. **Administrative Vehicle Replacement** Department of Public Works/Equipment

  F. **SP 91820 Pere Marquette Park Recreational Improvements** Department of Public Works

  G. **Management Agreement Between City of Muskegon and Parkland Acquisition Two, LLC** City Manager

  H. **LC Walker Arena – HVAC Upgrades** City Manager

- □ **PUBLIC HEARINGS:**

  A. **Request to Establish an Obsolete Property District – 285 West Western Avenue** Planning & Economic Development

  B. **Request to Issue an Obsolete Property Certificate – Parkland Muskegon, Inc – 285 West Western Avenue** Planning & Economic Development

- ☐ **COMMUNICATIONS:**
- ☐ **UNFINISHED BUSINESS:**
- ☐ **NEW BUSINESS:**

**A. <u>Convention Center Construction Management Services – Preconstruction Agreement</u>** City Manager

**B. <u>Concurrence with the Housing Board of Appeals Notice and Order to Demolish</u>** Public Safety

**157 Allen Avenue**

**1934 Hudson Street**

**1505 Sixth Street**

**1853 Sanford Street**

**2555 Morton Avenue**

**C. <u>Amendment to the Medical Marihuana Facilities Licensing Overlay District</u>** Planning & Economic Development

- ☐ **ANY OTHER BUSINESS:**
- ☐ **PUBLIC PARTICIPATION:**

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

- ☐ **CLOSED SESSION:**
- ☐ **ADJOURNMENT:**

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

# Memorandum

To: Mayor and Commissioners

From: Frank Peterson

Re: City Commission Meeting

Date: January 16, 2019

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

1. Under the Consent Agenda, we are asking the Commission to consider the following:
    a. Approval of meeting minutes from the most-recent City Commission meeting.
    b. Approval of a Resolution authorizing a liquor license for Rake Beer Project.
    c. Approval of an amendment to the Citizen's Police Review Board's By-Laws. This was discussed at the most-recent Community Relations Committee meeting.
    d. Authorization for annual dozer rent for beach leveling at Pere Marquette Park Beach.
    e. Authorization to purchase two Chevrolet Impalas to replace the two oldest administrative vehicles in the police department.
    f. Authorization to award the contract for Pere Marquette Park Improvements to Tridonn Construction Company. We are recommending that alternates 1, 3, and 4 also be awarded at this time.
    g. Approval of the management agreement with Parkland Properties to operate and manage the convention center. This agreement was crafted over the past six months to ensure that the convention center is operated in a manner that meets the expectations of the City of Muskegon and Muskegon County.
    h. Authorization to accept the proposal from Hurst Mechanical to complete the HVAC overhaul at the LC Walker Arena. The proposal is $697,894.

2. Under Public Hearings we will accept comments on the following:
    a. A request to establish an Obsolete Property District at 285 West Western Avenue. This will allow for commercial development on the first two floors of the Highpoint Flats Building.
    b. A request to issue an Obsolete Property Certificate at 285 West Western to facility commercial rehabilitation of the building's first two floors.

3. Under the New Business, we are asking the Commission to consider the following:
    a. We are seeking authorization to award a contract for pre-construction services to Clark Construction Company for the development of the Muskegon Convention Center. The final contract is being reviewed by the City's legal department and will be available to Commissioners by close of business Friday.
    b. We are seeking concurrence with the Housing Board of Appeals Notice and Order to demolition structures on five sites.
    c. We are seeking Commission concurrence with the Planning Commission's decision to deny a request to amend the Medical Marihuana Overlay District.

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

Date: January 16, 2019

To: Honorable Mayor and City Commissioners

From: Ann Marie Meisch, City Clerk

RE: Approval of Minutes

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SUMMARY OF REQUEST: To approve minutes of the January 7, 2019 Worksession and January 8, 2019.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, January 7, 2019
5:30 p.m.
City Commission Chambers

MINUTES

**2019-01**
Present: Mayor Gawron, Vice-Mayor Hood, Commissioners Turnquist, German, Johnson, Warren, Rinsema-Sybenga, and German

**2019 Event Discussion**
Discussion took place of a celebration for the City's 150th Anniversary. Commissioners gave approval for the City Clerk to sign letters of intent with three bands who have indicated they are available while continuing to book more for a three day celebration.

**Mercy Health Outreach/Community Update**
A powerpoint of the updated Mercy/Health campus was presented to Commissioners. Commissioners asked for updates on the Hackley campus as well as the General Hospital campus. The General Hospital campus has just been listed for sale. Studies are being conducted on the Hackley campus and what is best use for this site.

**Presentation on the Needs of the Marina**
A powerpoint presentation was given on a study of the needs of the marina.

**Lakeside District Association - Utility Relocation**
The cost to relocate the poles is $1 million. The lines cannot be buried, they can only be relocated. Staff made the recommendation to continue with the project as originally proposed and keep the utility poles and focus on streetscaping. Property owners may choose to have the poles relocated under a special assessment paid by the property owners.

**Muskegon & Webster Pavement Marking**
The City Engineer gave an overview of the downtown parking by eliminating turn lanes. The cost is approximately $20,000 to re-stripe the roads.

**Streetlights on 1st Street - Western to Clay**
We are adding two lights on 1st Street from Western to Clay.

**2019 User Fee Update**
Beth Lewis, Finance Director, reviewed the proposed changes to the fee schedule with the City Commission.

This item will be on the January 8, 2018 Commission Meeting for consideration by the City Commission.

**Any Other Business – None**

**Adjournment:** The Worksession meeting adjourned at 8:35 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

# CITY OF MUSKEGON

## CITY COMMISSION MEETING

## JANUARY 8, 2019 @ 5:30 P.M.

### MUSKEGON CITY COMMISSION CHAMBERS

### 933 TERRACE STREET, MUSKEGON, MI 49440

## MINUTES

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, MI at 5:30 p.m., Tuesday, January 8, 2019. Pastor Tim Cross, Living Word 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: Vice Mayor Eric Hood, Commissioners Ken Johnson, Byron Turnquist, Debra Warren, Willie German, Jr., and Dan Rinsema-Sybenga, City Manager Frank Peterson, City Attorney John Schrier, and City Clerk Ann Meisch.

Absent: Mayor Stephen J. Gawron

**2019-02 CONSENT AGENDA:**

A. **Approval of Minutes** City Clerk

SUMMARY OF REQUEST: To approve minutes of the December 11, 2018 Regular Meeting and the December 18, 2018 Special Meeting.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approval of the minutes.

C. **Approval of Building Contract for 1639 5th Street** Community & Neighborhood Services

SUMMARY OF REQUEST: To award the Building Contract for the rehabilitation and lead abatement of 1639 5th Street to Midwest Builders for the City of Muskegon's Homebuyers Program through CNS.

CNS received three bids, the const estimate from our spec writer was $89,050.

FINANCIAL IMPACT: The funding for this project has been secured with 2018 HOME funds.

STAFF RECOMMENDATION: To award Midwest Builders the rehabilitation and lead abatement contract for 1639 5th Street; in the amount of $91,720.00, for the Community and Neighborhood Services Office.

STAFF RECOMMENDATION: To award Midwest Builders the rehabilitation and lead abatement contract for 1639 5th Street; in the amount of $91,720.00 for the Community and Neighborhood Services Office.

**E. Vacation of Alley Between Nelson St. and Harbour Towne Circle North of Rodgers Ave.** Planning & Economic Development

SUMMARY OF REQUEST: This alley was vacated on September 27, 1994. However, it was never recorded with the Register of Deeds. Alley vacations must be recorded within 30 days of the resolution passing. The owner of the new house being constructed at 1360 Nelson Street is having trouble getting home insurance because of this error. There is no alley in the area anymore and the lots on Nelson Street now abuts Harbour Towne.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Staff recommends vacation of the alley.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously recommended in favor to vacate the alley at their December 13, 2018 Meeting.

**F. Remembrance Drive Resolution** Engineering

SUMMARY OF REQUEST: Approve the resolution authorizing Remembrance Drive to be added into the City of Muskegon Act 51 Street network as a major street and authorize the Mayor and City Clerk to sign the Resolution.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Approve the resolution and authorize the Mayor and City Clerk to sign.

**G. 2019 User Fee Update** Finance

SUMMARY OF REQUEST: City departments have reviewed and updated their user fees and these have been incorporated into the Master Fee Resolution for your consideration.

The new fees and fee changes that are being proposed are highlighted and significant changes include the following:

- CNS has added some program fees;
- Large boat basin fees have been adjusted;
- Lowered picnic shelter rental fees;
- Cemetery fees have been adjusted;

- Rental registration and re-inspection fees have been adjusted.

FINANCIAL IMPACT: Revenue generated for fee supported activities.

BUDGET ACTION REQUIRED: None at this time. Adoption of the Master Fee Resolution will help the city attain its budget revenue estimates.

STAFF RECOMMENDATION: Approval of the Master Fee Resolution.

**H. <u>Community Relations Committee Appointment Recommendations</u>** City Clerk

SUMMARY OF REQUEST: To accept reappointments, appointments, and resignations for various community relations committees, boards, authorities, and commissions, as follows:

- Board of Review – Reappoint: Jane Clingman-Scott (Citizen), Bryon Mazade (Citizen), and Ralph Burr (Citizen)
- Citizen Police Review Board – Reappoint: Teresa Emory (Neighborhood Association Rep.), Ann Craig (Neighborhood Association Rep.), and William Muhammad (Member of Minority Based Org.) Appoint: Robert Roundtree (Citizen At Large) and Faye Redmond (Citizen At Large)
- Civil Service – Appoint: Larry Spataro (Citizen)
- CDBG/CDC – Reappoint: Eleanor Canter (Citizen At Large) and Veania Coleman (Citizen At Large)
- Construction Code Board of Appeals – Reappoint: Lane Bensten (Mechanical), Wade VandenBosch (Constructions Manager), and Michael Eslick (Public Health)
- Downtown Development Authority – Reappoint: Jay Wallace (Interest in District) and Martha Bottomley (Citizen) Appoint: Doug Pollock (Citizen), Brad Hastings (Interest in District), and Francena DePung (Interest in the District)
- Election Commission – Reappoint: Wanda Matsey (Citizen)
- Equal Opportunity Committee – Reappoint: Betty Cheeks (Citizen At Large) and Charlotte Johnson (Citizen At Large) Appoint: Destinee Keener (Citizen at Large)
- Historic District Commission – Reappoint: Andrea Riegler (Registered Architect) and Karen Panozzo (Resides or Has Interest in Historic District) Accept Resignation: Susan Kroes (Resides or Has Interest in Historic District
- Housing Code Board of Appeals – Reappoint: Ed Simmons (Citizen) and Greg Borgman (Citizen)

- Housing Commission – Reappoint: Oneata Bailey (Citizen)
- Income Tax Board of Review – Appoint: Michael Haueisen (Resident)
- Local Development Finance Authority – Reappoint: Faye Redmond (Citizen)
- Local Officers Compensation Commission – Reappoint: Greg Borgman (Citizen) Appoint: Samara McIntosh (Citizen)
- Zoning Board of Appeals – Reappoint: Steve Warmington Sr. (Resident)

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To concur with the recommendations of the Community Relations Committee and approve the reappointments and appointments.

**Motion by Commissioner Warren, second by Commissioner German, to approve the consent agenda as presented, except items B and D.**

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

**Nays: None**

***MOTION PASSES***

**2019-03 ITEMS REMOVED FROM CONSENT:**

**B. <u>Tank Farm Site, Lakeside District and Development Proposal Resolution</u>**
City Manager

SUMMARY OF REQUEST: To adopt a resolution to proceed work with the development interest, the Michigan Department of Environmental Quality, the Great Lakes Commission, the USEPA, the National Oceanic and Atmospheric Administration, members of our Congressional Delegation and other, including responsible parties, to see that this property is cleaned of contamination and restored such that the proposed development can proceed in keeping with the goals and priorities of the City of Muskegon and, further, that copies of this resolution be submitted to the aforementioned parties along with a request that the contamination from this site be removed and addressed.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Adopt the resolution.

**Motion by Commissioner Johnson, second by Commissioner Rinsema-Sybenga,**

**to adopt the resolution.**

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

**Nays: None**

***MOTION PASSES***

**D. <u>Request to Distribute Proposed Master Plan Amendments to Neighboring Communities for Review</u>** Planning & Economic Development

SUMMARY OF REQUEST: The Planning Commission has requested to amend the Master Land Use Plan by including the Imagine Muskegon Lake plan as part of the plan and to modify the Future Land Use map in the 2008 Downtown & Lakeshore Redevelopment Plan. The Planning & Enabling Act allows cities to amend their Master Plan as long as neighboring jurisdictions are given a 63 day notice. After 63 days, a public hearing must be held to approve the proposed amendments.

FINANCIAL IMPACT: None

BUDGET ACTION REQUIRED: None

STAFF RECOMMENDATION: Approval of the request to distribute the plan.

COMMITTEE RECOMMENDATION: The Planning Commission unanimously approved to distribute the plan at their December 13, 2018 Meeting.

**Motion by Commissioner Johnson, second by Commissioner Warren, to approve the request to distribute the plan.**

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

**Nays: None**

***MOTION PASSES***

**2019-04 NEW BUSINESS:**

**A. <u>Transmittal of 6/30/18 Comprehensive Annual Financial Report</u>** Finance

SUMMARY OF REQUEST: The City's June 30, 2018 Comprehensive Annual Financial Report (CAFR) will be distributed to the City Commissioners via email and hard copy. The CAFR will also be available on the City's website. The CAFR includes the annual independent auditor's report as required by state law. The CAFR has been prepared in accordance with all current Governmental Accounting Standards Board (GASB) pronouncements and also includes the single audit of federal grants received by the City.

FINANCIAL IMPACT: The CAFR report summarizes the City's financial activities for the year and includes the independent auditor's unmodified opinion on the City's financial statement.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Acceptance of the June 30, 2018 CAFR and authorization for staff to transmit the CAFR to appropriate federal, state and private agencies.

**Motion by Commissioner Warren, second by Commissioner German, to accept the June 30, 2018 CAFR and authorize staff to transmit the CAFR to appropriate federal, state and private agencies.**

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

**Nays: None**

***MOTION PASSES***

**PUBLIC PARTICIPATION:** Public Comments were received.

**ADJOURNMENT:** The City Commission meeting adjourned at 6:17 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC – City Clerk

Date: January 16, 2019

To: Honorable Mayor and City Commissioners

From: Ann Marie Meisch, City Clerk

RE: Adopt a Resolution Approving the Liquor License Application Rake Beer Project, LLC

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SUMMARY OF REQUEST: To adopt a resolution approving the request for a Liquor License for Rake Beer Project, LLC to be issued a Micro Brewer's License and Small Winer Maker's License.

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: Adopt a resolution approving the request.

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

Business ID: ____________
Request ID: ____________
(For MLCC Use Only)

# Manufacturer & Wholesaler License & Permit Application

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

## Part 1 - Applicant Information

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

| | |
|---|---|
| Applicant name(s): Rake Beer Project, LLC | |
| Address to be licensed: 794 Pine Street | |
| City: Muskegon | Zip Code: 49442 |
| City/township/village where license will be issued: City of Muskegon | County: Muskegon |
| Federal Employer Identification Number (FEIN): 83-1847230 | |

*Leave Blank - MLCC Use Only*

1. Are you requesting a new license? (●) Yes ( ) No
2. Are you applying ONLY for a new permit or permission? ( ) Yes (●) No
3. Are you buying an existing license? ( ) Yes (●) No
4. Are you modifying the size of the licensed premises? ( ) Yes (●) No
   If Yes, specify: ☐ Adding Space ☐ Dropping Space ☐ Redefining Licensed Premises
5. Are you transferring the location of an existing license? ( ) Yes (●) No
6. Is this license being transferred as the result of a default or court action? ( ) Yes (●) No
7. Do you intend to use this license actively? (●) Yes ( ) No

## Part 2 - License Transfer Information (If Applicable)

If transferring ownership of a license ONLY and not transferring the location of a license, fill out only the name of the current licensee(s)

| | |
|---|---|
| Current licensee(s): | |
| Current licensed address: | |
| City: | Zip Code: |
| City/township/village where license is issued: | County: |

## Part 3 - Licenses, Permits, and Permissions

Applicants for Manufacturer & Wholesaler licenses, permits, and permissions must complete the attached Schedule A and return it with this application. Transfer the fee calculations from the Schedule A to Part 4 below.

## Part 4 - Inspection, License, and Permit Fees - Make checks payable to **State of Michigan**

*Inspection Fees* - Pursuant to MCL 436.1529(4) a nonrefundable inspection fee of $70.00 shall be paid to the Commission by an applicant or licensee at the time of filing of a request for a new license or permit, a request to transfer ownership or location of a license, or a request to increase or decrease the size of the licensed premises. Requests for a new permit in conjunction with a request for a new license or transfer of an existing license do not require an additional inspection fee.

*License and Permit Fees* - Pursuant to MCL 436.1525(1), license and permit fees shall be paid to the Commission for a request for a new license or permit or to transfer ownership or location of an existing license.

| | | | | | |
|---|---|---|---|---|---|
| Inspection Fees: | $140.00 | License & Permit Fees: | $75.00 | **TOTAL FEES:** | **$215.00** |

## Schedule A - Licenses, Permits, & Permissions

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

| License Type: | Base Fee: | Fee Code MLCC Use Only |
|---|---|---|
| ☐ Brewer | $50.00 | |
| ☒ Micro Brewer (Under 60,000 barrels annually) | $50.00 | 4038 |
| ☐ Wine Maker | $100.00 | |
| ☒ Small Wine Maker (Under 50,000 gallons annually) | $25.00 | 4038 |
| ☐ Winery Tasting Room | $100.00 | |
| ☐ Spirit Tasting Room | $100.00 | |
| ☐ Brandy Tasting Room | $100.00 | |
| ☐ Manufacturer of Brandy | $100.00 | |
| ☐ Manufacturer of Mixed Spirit Drink | $100.00 | |
| ☐ Manufacturer of Spirits | $1,000.00 | |
| ☐ Small Distiller (Under 60,000 gallons annually) | $100.00 | |
| ☐ Outstate Seller of Beer | $1,000.00 | |
| ☐ Outstate Seller of Wine | $300.00 | |
| ☐ Outstate Seller of Mixed Spirit Drink | $300.00 | |
| ☐ Wholesaler | $300.00 | |

For delivery vehicle decal fees please use Report of Delivery Vehicles form (LCC-351).

| | | |
|---|---|---|
| ☐ Warehouser | $50.00 | |
| ☐ Industrial Manufacturer | $10.00 | |
| ☐ Seller of Alcohol | $10.00 | |
| ☐ Limited Alcohol Buyer | $10.00 | |
| ☐ Consumer Sampling Event License | No charge | |

*Sunday Sales Permit (AM) allows the sale of liquor, beer, and wine on Sunday mornings between 7:00am and 12:00 noon, if allowed by the local unit of government.

**Sunday Sales Permit (PM) allows the sale of liquor on Sunday afternoons and evenings between 12:00 noon and 2:00am (Monday morning), if allowed by the local unit of government. No Sunday Sales Permit (PM) is required for the sale of beer and wine on Sunday after 12:00 noon. The Sunday Sales Permit (PM) fee is 15% of the fee for the license that allows the sale of liquor. Additional bar fees and B-Hotel room fees are also calculated as part of the permit fee.

Licenses, permits, and permissions selected on this form will be investigated as part of your request. Please verify your information prior to submitting your application, as some licenses, permits, or permissions cannot be added to your request once the application has been sent out for investigation by the Enforcement Division.

| Permits: | Base Fee: | Fee Code MLCC Use Only |
|---|---|---|
| ☐ Sunday Sales Permit (AM) | $160.00 | |
| ☐ Sunday Sales Permit (PM) | 15%** | |
| ☐ Catering Permit | $100.00 | |
| ☒ Beer and Wine Tasting Permit | No Charge | |
| ☐ Outdoor Service | No Charge | |
| ☐ Entertainment Permit | No Charge | |
| ☐ Dance Permit | No Charge | |
| ☐ Topless Activity Permit | No Charge | |
| ☐ Living Quarters | No Charge | |
| ☐ Specific Purpose Permit (list activity below): | | |

Days/Hours requested: ______________________

☐ Extended Hours Permit (check type below): No Charge

◯ Dance ◯ Entertainment

Days/Hours requested: ______________________

| | | |
|---|---|---|
| ☐ Off-premise Storage | No charge | |
| ☐ Direct Connection(s) | No charge | |

**Inspection, License, Permit, & Permission Fee Calculation**

Number of Licenses: 2 x $70.00 Inspection Fee

| | |
|---|---|
| Total Inspection Fee(s): | $140.00 |
| Total License Fee(s): | $75.00 |
| Total Permit Fee(s): | |
| **TOTAL FEES DUE:** | **$215.00** |

Make checks payable to **State of Michigan**

Date: January 16, 2019

To: Honorable Mayor and City Commissioners

From: Ann Marie Meisch, City Clerk

RE: Citizen’s Police Review Board By-laws Amendment

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SUMMARY OF REQUEST: To amend the Citizen Police Review Board bylaws and have the Minority Based Organizations state:

The following organizations shall qualify as Minority Based Organizations pursuant to Section II A (1) of the Citizens Police Review Board Policy:

1. Muskegon Urban League (inactive/no longer exists)

2. NAACP – Muskegon Chapter

3. Latinos Working for the Future (inactive/no longer exists)

4. Hispanic Community Services Coalition

5. Nation of Islam

6. Ad Hoc Committee for Equality and Justice (inactive/no longer exists)

FINANCIAL IMPACT: None.

BUDGET ACTION REQUIRED: None.

STAFF RECOMMENDATION: To amend the Citizen Police Review Board bylaws as stated.

# APPENDIX C

## Citizen's Police Review Board

I. Purposes:

A. To provide policies and procedures for processing and investigating citizen complaints regarding alleged police misconduct.

B. To provide civilian review of the investigations of alleged police misconduct undertaken by the City of Muskegon including investigations conducted by the "Internal Investigation Unit" of the Muskegon Police Department

C. To ensure the integrity of investigations of police misconduct and to thereby enhance community confidence in the Muskegon Police Department

D. To encourage compliance with rules and regulations concerning police officers' conduct during interactions with citizens.

E. To encourage people who believe they have been mistreated by police officers to use the Internal Affairs system to have that officer's conduct reviewed.

F. To create a process that fairly and evenhandedly evaluates and judges the conduct of everyone involved to determine whether or not a breach of departmental rules and regulations has occurred.

G. To afford the community a sense of confidence that the community itself is involved as necessary in reviewing the activities of its police officers; and to maintain high morale and good disciplinary practices within the police department.

II. Organization and Membership:

A. There will be nine members appointed to the CPRB by the City Commission for two-year terms, except as otherwise provided in this section. The composition of the CPRB shall be as follows:

1. Three members representing Minority Based Organizations* (a list will be attached of organizations that will qualify as MBO's that will be authorized to submit nominations for membership on the CPRB).

2. Three members representing Neighborhood Associations of Muskegon (a list will be attached of the Neighborhood Associations of Muskegon that will be authorized to submit nomination for the membership on the CPRB.).

3. One law enforcement professional.

4. Two Citizens at Large. (These individuals shall be appointed from a list of eligible city resident nominees submitted by any interested person and organizations including, without limitation, organizations eligible to submit nominees in other categories. In making such appointments, the City Commission shall consider the demographic diversity of the City of Muskegon.

B. Residency Requirement- Qualifications of candidates to the CPRB will be considered in the following manner as they pertain to residency:

1. Full-time residents of City of Muskegon have the first priority for all appointments. In the event a position to be filled requires certain licensure, business connection with the City, or particular expertise, then the City Commission may, if not otherwise prevented by law, appoint non-residents.

2. Second priority shall be given to non-residents having identifiable business interests located in the City. As above, if no such persons exist to fill positions needing or requiring certain expertise or licensure, then non-residents who have no such interest may be considered.

C. Membership Eligibility-Appointment to the CPRB shall be conditioned upon voluntary submission to and completion of a thorough background check.

D. Officers- There shall be a Chairperson of the CPRB appointed by its membership. The chairperson shall preside over all meetings, have a vote in the proceedings and be authorized to call special meetings.

E. Removal from Office- Any member of the CPRB may be removed or suspended by the City Commission for malfeasance, failure to attend meetings (missing three unexcused and/or consecutive meetings in twelve month period or criteria established by the city Commission for appointees to all city committees/commissions), upon conviction of a criminal offense after appointment to the CPRB, or for the inability/failure to otherwise adequately perform the duties of membership.

F. Conflict of Interest- should a member of the CPRB become the focus of any criminal proceeding or otherwise have a conflict of interest in any matter before the PRB such that his or her ability to impartially participate in the deliberations of the CPRB may be compromised, the CPRB member shall notify the Chairperson of a potential conflict of interest and shall be excused from such deliberations or another participation. Any potential conflict of interest coming to the attention of the CPRB shall be resolved by majority vote as required.

G. Meetings and Working Sessions- the CPRB membership shall initially meet to adopt procedures for the conduct of meetings and the operational activities of the CPRB. Following the initial meeting, the CPRB shall meet at least once every month to conduct business at a regular meeting. Such additional regular or special meetings as may be required may be scheduled by the Chairperson or the City Manager. All regular and special meetings of the CPRB shall initially be opened to the public. An opportunity for public comment will be provided during the public portion of the meeting. All meetings will go into Executive Session when there is review and consideration of specific complaints presented to the CPRB. In addition, the CPRB may at regular or special meetings can go into an Executive Session by a majority vote of the members appointed to discuss any matter, provided that no vote is taken in the Executive Session. All business of the CPRB requiring a vote shall be transacted in a public meeting.

H. Quorum- A quorum for CPRB meetings shall be five of the members appointed. A majority vote of those appointed to the CPRB shall be required to transact the substantive business of the CPRB including the adoption of reports and recommendations to the City Commission/City Manager, and the initiation of any investigation, within the scope of the CPRB review authority.

The CPRB or any committee composed of a lesser number of board members may conduct such working sessions as are required to prepare for the transaction of business at regular or special meetings. No business of the CPRB requiring a vote shall be transacted in a working session.

The chairperson shall preside over all meetings of the Board and shall have the right to vote on all questions. The chairperson shall ensure that the activities of the CPRB are conducted in compliance with all applicable City laws.

III. Jurisdiction and Duties:

A. The CPRB is authorized to review all investigation of alleged police misconduct performed by the City of Muskegon including those performed by the Internal Affairs Unit of the Muskegon Police Department. Review will include evaluation of the thoroughness, accuracy, credibility and unbiased nature of each investigation.

B. The CPRB shall receive a copy of all complaints of alleged police misconduct made to the Internal Affairs Unit of the Muskegon Police Department.

C. The CPRB may also accept complaints of misconduct directly. These complaints will be referred immediately to the City Manager for investigation.

D. The City shall maintain a central file of all complaints received.

E. The CPRB may request that supplemental investigations be conducted by the City of appropriate agencies. Such requests shall be submitted to the City Manager for consideration.

F. The Chief of Police and the City Manager shall provide timely access to all relevant city records, documents, and employees, including employee personnel records and departmental investigation files and reports. (Criminal intelligence information shall not be provided unless a particularized need is demonstrated and the written approval of the City Manager or designee is obtained.

G. The CPRB, through the City Manager, may request the appearance of any member of the Muskegon Police Department to other city employees and may question such employees for the purpose of aiding in the evaluation and investigations of allegations of police misconduct.

H. All information obtained by the CPRB shall be kept confidential unless a matter of public record under state law. Such confidentiality shall be strictly maintained in any matter involving pending or potential criminal violations.

I. If parallel criminal and administrative investigations are necessary; the CPRB shall consult with the City Manager and the Chief of Police for the purpose of coordinating board injuries with the criminal and and administrative investigation. CPRB shall not request the production of parallel criminal or administrative investigation in any manner that would potentially threaten the effectiveness of criminal or administrative subpoena powers and cannot compel testimony or the production of documents.

IV. Complaint Procedure:

A. Registration of Complaints- Citizen complaints may be registered through either the Muskegon Police Department of the CPRB through the office of the City Manager. The recipient of a complaint will immediately (within one business day) forward a copy of the complaint to the other party (MPD or CPRB)

1. Complaints may be lodged in writing, in person or by telephone.

2. A complaint may be lodged on behalf of oneself or on behalf of another person by any interested person or group; however should the Complaint reach the point of being appealed before the CPRB, the CPRB will only hear from direct witnesses to the incident in question

3. No complaint will be deemed to have been filled with the CPRB unless and until it has been reduced to writing and signed by the complainant in accordance with the following procedure:

a. If the complaint is lodged in person, the person will be provided a complaint form. The complainant shall be asked to fill out the form and to sign the form in a space provided. A copy of the completed form shall be given to the complainant to serve as a record of the filing of the complaint. Assistance in filling out the complaint form will be provided as necessary.

b. If the complaint is lodged by mail, the complaint form shall be completed by the city of police department staff on the basis of the information contained within the correspondence. A copy of the completed complaint shall be mailed to the complainant with a request that the complainant review the complaint form for accuracy. If accurate, the complainant shall be requested to sign the complaint form and return it to the city. (if necessary, the complainant will be instructed to correct the complaint form for accuracy before it is returned).

c. If the complaint is lodged by telephone, the receiving staff shall mail a complaint form to the complainant to fill out, sign and return.

B. Upon receipt of a signed written complaint, the complainant will be provided with an acknowledgment of receipt which will contain the process in which the complaint will be handled.

C. Time Limitations for Filing Complaints- All complaints shall be received within six (6) months after the date of the incident giving rise to the complaint, except complaints with allege criminal misconduct may be filed at any time.

D. Internal Affairs unit of the Muskegon Police Department- The Internal Affairs Unit of the Muskegon Police Department will be responsible for the initial investigation of all complaints alleging police misconduct by Muskegon Police Officers. The Internal Affairs unit will investigate and will prepare a “complaint Investigation Report” which will include recommendation(s) for disposition. When an investigation is completed and a finding is made, a “Complaint Disposition Report” will be sent to the Chief of Police or his designee, to the complainant(s), to the officer(s) involved, to the City Manager, and to the CPRB. The IAU will endeavor to complete the investigation within 30 calendar days.

E. Appeal of IAU/MPD Disposition- within ten (10) business days of the receipt of the Complaint Disposition Report delivered by certified mail or messenger to the complainant(s) last known address and the police officer(s), the complainant or the respective police officer(s) may request in writing a review of this IAU investigation and finding through the CPRB.

   The CPRB shall meet as necessary to consider the matters referred to it in a timely fashion. The CPRB shall provide for recordation of a summary of its proceedings. The board shall provide a written rationale for its findings.

F. Requests for Further Investigations by CPRB- the CPRB may request that the City conduct of arrange to have conducted, supplemental investigations. Such requests shall be submitted to the City Manager for consideration ( for further information see IIIE)

G. Final Appeal Board Decision- The Board shall provide a written final decision with respect to the allegations made by the complainant. The final decision of the Board shall be sent to the Mayor (City Commission), Chief of Police, the complainant(s), the officer(s), and the City Manager. The final disposition should be provided within 30 calendar days after the IAU determination is appealed.

H. Reports- The CPRB is authorized to issue reports to the Mayor (City Commission), City Manager and Chief of Police containing findings, conclusions and recommendations.

The CPRB shall also issue an annual report summarizing its activities for the previous calendar year. The annual report will review significant cases and recommendations. The annual report shall be issued to the City Commission, the City Manager and the Police Chief.

Attachment

Minority Based Organizations

The following organizations shall qualify as Minority Based Organizations pursuant to Section II A (1) of the Citizens Police Review Board Policy:

1. Muskegon Urban League (inactive/no longer exists)

2. NAACP – Muskegon Chapter

3. Latinos Working for the Future

4. Nation of Islam

5. Ad Hoc Committee for Equality and Justice (inactive/no longer exists)

**AGENDA ITEM NO._____________**

**CITY COMMISSION MEETING ____________________**

TO: Honorable Mayor and City Commission

FROM: Department of Public Works

DATE: January 22, 2019

SUBJECT: 2019 Dozer Rental for Beach Leveling

**SUMMARY OF REQUEST:**
Staff is requesting permission to enter into a rental agreement with Contractors Rental Corp., out of Grand Rapids, MI for a John Deere 850K WLT Dozer for leveling sand at Pere Marquette Beach.

**FINANCIAL IMPACT:**
Estimated cost for the 2019 Dozer rental is $9,800 (which includes $550 for delivery and pickup).

**BUDGET ACTION REQUIRED:**
None.

**STAFF RECOMMENDATION:**
Approve request.

**COMMITTEE RECOMMENDATION:**

Account Number: 15387
**CUSTOMER QUOTE**

**Michigan CAT**

RENTAL OPERATIONS
7700 CATERPILLAR DR SW
GRAND RAPIDS MI 49548

Web www.michigancat.com
Ph 616-827-8000
Email rental@michigancat.com

**SOLD TO**
ACCOUNTS PAYABLE
CITY OF MUSKEGON PURCHASING DEPT
CITY OF MUSKEGON
1350 E KEATING AVE
MUSKEGON MI 49442

| INVOICE NUMBER | INVOICE DATE | ORDER NUMBER | TERMS | CUSTOMER PO NUMBER | PAGE |
|---|---|---|---|---|---|
| | | GR-RNT-9457100 | Credit | | 1/1 |

| QTY | ITEM | DESCRIPTION | UNIT PRICE | EXTENSION |
|---|---|---|---|---|

CUSTOMER CONTACT: Vern Berndt - 231-724-6992 (Phone)
Billing frequency: Monthly based on 4-week periods

**SEG 1 /**

EQUIPMENT

| | | | | |
|---|---|---|---|---|
| 1 | CATERPILLAR D6TXW VHZ24F | Unit rates: 1,332.00/day, 3,622.50/week, 10,206.00/month | | |

MISCELLANEOUS

| | | | | |
|---|---|---|---|---|
| 1 | Equipment Delivery | | 750.00 | 750.00 |
| 1 | Equipment Pick Up | | 750.00 | 750.00 |

RENTAL REPRESENTATIVE: Richard Kerber
Phone: ext 2740
Cell: 616-262-1155
Fax: 866-451-0961
Email: Rick.kerber@michigancat.com

All Michigan CAT quotes are good for 30 days.
All rental billings are done in arrears - 28 day cycle - Allowing 10 hours a day, 50 hours a week & 180 hours a month.
All units are shipped with full fuel. Fuel used and not returned is charged at $7.00 per gallon.
Michigan CAT offers Fire, Theft and Vandalism protection for only 14% more per month. Please note that a $5000.00 deductible applies. Please let me know if you would like more details on our FTV Program.
We also offer trucking to your jobsite. Rates vary based on equipment size and delivery location.
If you have any questions please feel free to contact me.
Thank you for the opportunity to quote Caterpillar Equipment.

**Tax is not included
**Subject to availability

**Vern Berndt**

| | |
|---|---|
| **From:** | Mike Zalewski <mzalewski@southeasternequip.com> |
| **Sent:** | Thursday, January 10, 2019 6:49 AM |
| **To:** | Vern Berndt |
| **Cc:** | Bryan Furnace |
| **Subject:** | RE: Dozer quotes |

Vern,

If my memory serves me, you need an LGP machine correct? If so, the rate would be $8,500.00 per month. The freight will depend on where the machine would have to come from. Right now, all the LGP units are on rent in SE Ohio for pipeline work. Based on that, round trip freight will be approx. $2,500.00.

My concern is availability so please let me know your thoughts and if you think this is going to work I will check and see if it's likely we will have a machine available and let you know.

Thanks,

**Mike Zalewski /** Regional Manager
O: (248) 349-9922 ext. 2005 / C: (248) 497-2975 / F: (248) 349-9191

**Southeastern Equipment Co. Inc.**
48545 Grand River Ave. Novi MI 48374

**From:** Vern Berndt [mailto:vern.berndt@shorelinecity.com]
**Sent:** Wednesday, January 09, 2019 12:42 PM
**To:** Mike Zalewski <mzalewski@southeasternequip.com>
**Subject:** Dozer quotes

Mike,
I am requesting quotes for a dozer rental for leveling our beach starting April 22 2019 I will need it for four weeks.

I need a machine comparable to the 2050M like I used in 2017, can you send me cost including transportation if you have anything available?

Thanks,

*Vern Berndt*
*Highway Department Supervisor*
*City of Muskegon*
*231-724-6992*

Contractors Rental Corp.
600 AIS Drive
Grand Rapids, MI 49548

Phone: 616-538-2400
Fax: 616-538-0617
Mobile: 616-250-9867

**To**: City of Muskegon

**From**: Alex VanKampen

**E-Mail:**

**Date**: 1 / 9 / 19

**Phone:**

I appreciate you giving me the opportunity to quote you the following rates for the equipment you have requested. The following rates are based on 10 hours run time per day, 50 hours per week, and 200 hours per month. Additional charges apply if exceeded. Your rates are as follows:

**Job Site: Pere Marquette Beach**

| | Week | Month | Trucking |
|---|---|---|---|
| John Deere 850K WLT Dozer | $3,085 | $9,250 | $550 |

Please let me know if you have any further questions. The following rates do not include sales tax (6%). Customer is required to provide proof of insurance for rented and leased equipment coverage listing Contractors Rental Corp as additional insured and loss payee. If insurance coverage is not supplied, a non-refundable **14% damage waiver fee** will apply to the quoted and billed rate of each machine listed. Thank you for the opportunity to quote you on this project. I look forward to earning your business.

Sincerely,

Alex VanKampen
Rental Manager

City of Muskegon

# Memo

To: LeighAnn Mikesell

From: Doug Sayles

Date: 1/14/19

Re: Dozer Rental for Annual Beach Leveling at PM Park

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Below are 3 solicited bids for the dozer rental for the Highway Departments' beach leveling project, at PM Park for 2019.

**Michigan CAT** submitted a bid proposal of $10,206 per month plus $1,500 for delivery and pickup for a total of $11,706.

**Southeastern Equipment Co., Inc.** submitted a proposal of $8,500 per month plus $2,500 for delivery and pickup for a total of $11,000.

**Contractors Rental Corporation** submitted a proposal of $9,250 per month plus $550 for delivery and pickup, for a total of $9,800.

Based on the availability of the dozer, adequate size and the tabulated bids above, **Contractors Rental Corp., is** the lowest cost responding bidder to service our needs.

Therefore, DPW Supervisory Staff is requesting permission to rent the John Deere Dozer from **Contractors Rental Corp.,** for leveling the beach at PM Park, for 2019.

Date: 1/22/2019

To: Honorable Mayor and City Commissioners

From: DPW/Equipment

RE: Administrative Vehicle Replacement

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## SUMMARY OF REQUEST:

Authorize staff to purchase two(2) Chevy Impalas from Berger Chevrolet off of the Oakland County Contract. This will replace the two oldest administrative vehicles currently being used. Cost to the City will be $23,078.00 per vehicle.

## FINANCIAL IMPACT:

$23,078.00 x two, for a total price of $46,156.00

## BUDGET ACTION REQUIRED:

None. This is the amount budgeted.

## STAFF RECOMMENDATION:

Authorize staff to purchase two(2) Chevy Impala's from Berger Chevrolet


IMPALA

Date: January 15, 2019

To: Honorable Mayor and City Commissioners

From: Department of Public Works

RE: SP 91820 Pere Marquette Park Recreational Improvements

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SUMMARY OF REQUEST:

To award contract (SP 91820) for park recreational improvements of the Pere Marquette Park bath house and playground area, along with alternates 1, 3 and 4.

Six contractors submitted bids for this project as follows:

| | |
|---|---|
| Tridonn Construction Co. | $466,026.00 |
| Patron Construction Inc. | $487,808.77 |
| Muskegon Quality Builders Inc. | $498,363.00 |
| JKB Construction Inc. | $548,725.00 |
| Griffith Builders Inc. | $558,337.00 |
| TJM Services | $640,073.20 |

FINANCIAL IMPACT:

$466,026.00

BUDGET ACTION REQUIRED:

None. Initially budgeted for $385,000.00 from the CIP but will be adjusted in the next budget reforecast.

STAFF RECOMMENDATION:

Award the project to the low bidder, Tridonn Construction, Inc.

# City Of Muskegon

**Project Description:** Pere Marquette Park Rennovation **Project Number:** SP 91820

**Project Engineer:** Westshore Consulting (Wade VandenBosch) **Bid Opening:** 15-Jan-18

| | | | | | Engineers Estimate | | Tridonn Construction Co. | | Patron Construction Inc. | | Muskegon Quality Builders Inc. | | JKB Construction Inc. | | Griffith Builders Inc. | | TJM Services | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Line Item | Pay Code | Description | Units | Quantity | Unit Price | Total | Unit Price | Total | Unit Price | Total | Unit Price | Total | Unit Price | Total | Unit Price | Total | Unit Price | Total |
| 1 | | Provide & Install Playground Equipment, Surface & Concrete Subsurface | LSUM | 1 | $ 283,045.52 | $ 283,045.52 | $ 315,096.00 | $ 315,096.00 | $ 303,071.00 | $ 303,071.00 | $ 356,832.00 | $ 356,832.00 | $ 354,198.00 | $ 354,198.00 | $ 352,783.00 | $ 352,783.00 | $ 387,642.00 | $ 387,642.00 |
| 2 | | Bathhouse Improvements & Addition | LSUM | 1 | $ 123,837.00 | $ 123,837.00 | $ 93,368.00 | $ 93,368.00 | $ 109,500.00 | $ 109,500.00 | $ 94,510.00 | $ 94,510.00 | $ 125,334.00 | $ 125,334.00 | $ 155,292.00 | $ 155,292.00 | $ 169,695.20 | $ 169,695.20 |
| 3 | | Site Grading | LSUM | 1 | $ 1,300.00 | $ 1,300.00 | $ 20,801.00 | $ 20,801.00 | $ 38,899.77 | $ 38,899.77 | $ 2,832.00 | $ 2,832.00 | $ 24,854.00 | $ 24,854.00 | $ 3,030.00 | $ 3,030.00 | $ 22,400.00 | $ 22,400.00 |
| 4 | | Sidewalk Improvement | LSUM | 1 | $ 15,336.00 | $ 15,336.00 | $ 14,300.00 | $ 14,300.00 | $ 5,340.00 | $ 5,340.00 | $ 15,682.00 | $ 15,682.00 | $ 14,011.00 | $ 14,011.00 | $ 17,030.00 | $ 17,030.00 | $ 11,200.00 | $ 11,200.00 |
| 5 | | Provide & Install Two (2) Benches | LSUM | 1 | $ 1,628.00 | $ 1,628.00 | $ 1,546.00 | $ 1,546.00 | $ 1,326.00 | $ 1,326.00 | $ 1,502.00 | $ 1,502.00 | $ 3,130.00 | $ 3,130.00 | $ 1,590.00 | $ 1,590.00 | $ 3,136.00 | $ 3,136.00 |
| 6 | | Bonding | LSUM | 1 | $ 4,250.00 | $ 4,250.00 | $ 4,266.00 | $ 4,266.00 | $ 5,569.00 | $ 5,569.00 | $ 4,800.00 | $ 4,800.00 | $ 5,300.00 | $ 5,300.00 | $ 4,780.00 | $ 4,780.00 | $ 13,000.00 | $ 13,000.00 |
| | | | | BASE BID | Totals: | $ 429,396.52 | | $ 449,377.00 | | $ 463,705.77 | | $ 476,158.00 | | $ 526,827.00 | | $ 534,505.00 | | $ 607,073.20 |
| | | | | | | | *As-Read* | *Same* | | *Same* | | *Same* | | *Same* | | *Same* | | *Same* |
| A-1 | | Alternate #1 - Replacement of Existing Plumbing Fixtures | LSUM | 1 | | $ - | $ 7,755.00 | $ 7,755.00 | $ 11,099.00 | $ 11,099.00 | $ 10,875.00 | $ 10,875.00 | $ 16,000.00 | $ 16,000.00 | $ 9,153.00 | $ 9,153.00 | $ 9,900.00 | $ 9,900.00 |
| A-2 | | Alternate #2 - Metal Roof in Lieu of Shingled Roof | LSUM | 1 | | $ - | $ 25,630.00 | $ 25,630.00 | $ 28,776.00 | $ 28,776.00 | $ 11,200.00 | $ 11,200.00 | $ 28,000.00 | $ 28,000.00 | $ 13,990.00 | $ 13,990.00 | $ 3,800.00 | $ 3,800.00 |
| A-3 | | Alternate #3 - Replacment of Existing Lighting Fixtures (w/LED) | LSUM | 1 | | $ - | $ 5,407.00 | $ 5,407.00 | $ 8,526.00 | $ 8,526.00 | $ 5,500.00 | $ 5,500.00 | $ 5,898.00 | $ 5,898.00 | $ 5,554.00 | $ 5,554.00 | $ 6,600.00 | $ 6,600.00 |
| A-4 | | Alternate #4 - Repainting of Existing Interior/Exterior Surfaces | LSUM | 1 | | $ - | $ 3,487.00 | $ 3,487.00 | $ 4,478.00 | $ 4,478.00 | $ 5,830.00 | $ 5,830.00 | NO BID | $ - | $ 9,125.00 | $ 9,125.00 | $ 16,500.00 | $ 16,500.00 |
| | | | | BASE BID + ALTERNATES | Totals: | $ - | | $ 491,656.00 | | $ 516,584.77 | | $ 509,563.00 | | $ 576,725.00 | | $ 572,327.00 | | $ 643,873.20 |
| | | | | BASE BID + ALTERNATES 1, 3, 4 | Totals: | | | $ 466,026.00 | | $ 487,808.77 | | $ 498,363.00 | | $ 548,725.00 | | $ 558,337.00 | | $ 640,073.20 |

AGENDA ITEM NO. ________________

CITY COMMISSION MEETING ___________________________

**TO:** Honorable Mayor and City Commissioners

**FROM:** Frank Peterson, City Manager

**DATE:** January 16, 2019

**RE:** Convention Center Management Agreement

**SUMMARY OF REQUEST:**
City staff is requesting approval of the attached management with Parkland Acquisitions Two. Parkland will be operating the convention center on behalf of the City of Muskegon.

**FINANCIAL IMPACT:**
None

**BUDGET ACTION REQUIRED:**
None at this time.

**STAFF RECOMMENDATION:**
To approve the agreement and authorize the Mayor and Clerk to sign.

**COMMITTEE RECOMMENDATION:**
None.

# MANAGEMENT AGREEMENT

BETWEEN

## CITY OF MUSKEGON

AND

## PARKLAND ACQUISTION TWO, LLC

Dated as of December 6, 2018

**MANAGEMENT AGREEMENT**

This Management Agreement ("Agreement") is made and entered into as of ____________________, 2018 (the "Effective Date"), by and between the **City of Muskegon**, a Michigan municipal corporation ("City") and **Parkland Acquisition Two, LLC**, a Michigan limited liability company ("Manager") (City and Manager are collectively referred to as the "Parties" in this Agreement) with reference to the following facts:

**Recitals**

A. This Agreement sets forth the terms and conditions under which Manager shall provide management services to the City for the management, and operation of that certain convention and exhibition center and related facilities to be located on Shoreline Drive, in Muskegon, Michigan (the "Convention Center") located on real property owned by the City, as depicted and legally described on **Exhibit A** ("Premises");

B. The City is in the process of designing and constructing the Convention Center;

C. The Manager owns and operates two hotels in Downtown Muskegon, including the Delta By Marriot that will be attached to the Convention Center.

D. Manager has experience and expertise in the management, operation, and marketing of various types of venues, including public assembly facilities;

E. The City has selected Manager based on Manager's ownership of the two downtown hotels as well as Manager's qualifications to staff, manage, operate, and maintain the Convention Center in order to achieve the City's goals and objectives;

F. The City desires a state-of-the-art convention center that facilitates the City's goals of Muskegon being a destination of regional and state conventions, trade shows, and events. The City's priorities are to maximize the generation of hotel room occupancy taxes; ensure that the convention center is properly maintained; safeguard the City's capital investment in the Convention Center; and, as the need arises, recommend capital improvements, respond to the ever-changing needs of the community and users of the facility with recommendations for expansion, renovations and upgrades of services.

G. The City desires to engage Manager, and Manager desires to accept the engagement to manage, operate and market the Convention Center under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth in this Agreement, the recitals set forth above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## Article I. DEFINITIONS

Section 1.01 **Definitions.** Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

**"Affiliate" or "Affiliates"** means a Person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person. For purposes of this definition, "control" means ownership representing no less than 51% of the voting power in the controlled Person.

**"Agreement"** is defined in the introductory paragraph of this Agreement.

**"Agreement Year"** means a period of twelve consecutive months during the Term, with adjustments for the First Agreement Year and Final Agreement Year, hereafter defined, to account for periods of time prior to the commencement of the first full Fiscal Year, and for any early termination of the Term. Unless otherwise provided, the First Agreement Year commences on the Effective Date of this Agreement.

**"Booking Policy"** means the policy for booking events at the Convention Center attached as **Exhibit B.**

**"Capital Equipment"** means any and all furniture, fixtures, machinery and equipment to be utilized for the operation of the Convention Center, either additional or replacement, having a per item original cost of $5,000 or more, or an expected useful life of more than one year (provided any series of repairs, replacements or purchases that would ordinarily be considered a single project or would ordinarily be effected by entering into a single contract shall be considered a single cost item for purposes of determining whether it is Capital Equipment). Capital Equipment items may or may not be capitalized as capital assets on the City's balance sheet depending upon the City's asset capitalization policy in effect at the time of acquisition.

**"Capital Improvements"** means any and all building additions, alterations, renovations, repairs and improvements to the Convention Center, other than Routine Maintenance. Capital Improvement items may or may not be capitalized as capital assets on the City's balance sheets depending upon the City's asset capitalization policy in effect at the time of acquisition

**"City"** means the City of Muskegon, Michigan, a Michigan municipal corporation and charter city.

**"City Commission"** means the Commission of the City of Muskegon.

**"Commencement Date"** is the date when the Convention Center is first opened for operations by the City, following the substantial completion of construction activities.

**"Convention Center"** means the properties on which the Convention Center, including the Convention Center parking structures and lot depicted on **Exhibit B.**

"**Effective Date**" is the date on which this Agreement becomes effective.

"**Event Expenses**" mean any and all direct, shared, reimbursed and non-reimbursed expenses incurred or payments made by Manager in connection with the hosting of events at the Convention



VR

Center, including but not limited to the costs for event staffing such as ushers, ticket takers, security personnel and other event staff, and costs relating to set-up and clean-up.

"**FF&E**" means such furniture, fixtures and equipment purchased by the City for and utilized at the Convention Center.

"**Final Agreement Year**" means the last Agreement Year of this Agreement.

"**First Agreement Year**" means the period between the Effective Date and the end of the first full Fiscal Year which commences after the Commencement Date, or, if this Agreement is terminated earlier, the period from the Effective Date to the effective date of termination.

"**Fiscal Year**" means a one year period beginning July 1$^{St}$ and ending June 30$^{th}$.

**General Manager**" means the Manager Employee acting, from time to time, as the full-time, on-site manager of the Convention Center.

**"Governmental Capacity"** is defined in Section 11.08.

**"Law" or "Laws"** means all applicable federal, state, local and municipal laws, ordinances, orders, judgments, rules, regulations, requirements, mandatory guidelines or directives of any applicable governmental agency affecting the management and operation of the Convention Center.

**"Losses"** means any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees).

**"Manager"** means Parkland Acquisition Two, LLC, a Michigan limited liability company.

**"Manager Employees"** means all persons employed by Manager that perform services in connection with this Agreement at the Convention Center during the Term.

**"Operating Expenses"** mean expenses and expenditures incurred by, or at the direction of, Manager in promoting, operating, maintaining and managing the Convention Center, including, but not limited to: Manager and Employee compensation including bonuses, benefits, relocation costs, severance costs and related costs for Manager Employees; operating supplies, materials and parts costs; costs of any independent contractors (except those making capital repairs or improvements); advertising, marketing, group sales and public relations costs engaged by Manager; commissions, janitorial and cleaning expenses; snowplowing, landscape maintenance, window cleaning, pest control, data processing costs; dues, subscriptions and membership costs for Manager Employees; Manager's costs of procuring, administering and maintaining insurance policies required by this Agreement or desired by Manager to protect it or its operations; costs incurred by Manager to procure and maintain permits and licenses (except from the City); professional fees; printing and stationery costs; Event Expenses; postage and freight costs; banking services fees; equipment rental costs; computer equipment purchase and lease costs, internet, cable and telephone charges, copier/printer/facsimile equipment lease charges, software costs, and website construction, maintenance and hosting costs; other Routine Maintenance; utilities; safety and medical expenses; exterminator and waste disposal costs; costs relating to the maintenance of signage; all fees payable to Manager as compensation pursuant to Article 5 of this Agreement; and defense and litigation costs and expenses. *Operating Expenses do not include:* (i) expenses or expenditures in connection with Capital Improvements, Capital Equipment and FF&E purchases; (ii) any expenses



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relating to City employees unless agreed to in writing by Manager; (iii) the cost of property taxes for the Convention Center; (iv) the cost of insurance premiums incurred by the City to purchase and maintain property and casualty insurance for the Convention Center and the City's personal property located in the Convention Center; (v) the cost of any other insurance purchased by the City in excess of the insurance required to be purchased under Exhibit D of this Agreement; and (v) the City's gross revenues from the operation of the Convention Center due to a casualty occurrence; (v) debt service on the Convention Center; (vi) depreciation, amortization or interest expenses of the Convention Center; (vi) and any gains or losses from disposal of FF&E or other equipment that are owned by the City.

**"Operating Revenues"** mean the revenues of every kind or nature derived from operating, managing and promoting the Convention Center including but not limited to: license and lease fees and rentals; revenues from merchandise sales; advertising, signage and sponsorship sales and renewals; event sponsorship revenues; equipment rentals; box office revenues, ticket surcharges, public facility maintenance charges and ticket service fees; parking revenues received for parking at the Convention Center; title sponsorship revenues; revenues generated from the sale of food and beverage service commissions or other revenues from decorating the Convention Center and set-up and tear down of equipment for events; security services revenues; revenues from subcontractors.

"**Operating Loss**" means the amount of Operating Expenses which exceed Operating Revenues for a given Agreement Year, arising after the Commencement Date.

**"Operating Profit"** means the amount of Operating Revenues which exceed Operating Expenses for a given Agreement Year.

**"Person"** means any individual, general partnership, limited partnership, limited liability partnership, corporation, joint venture, trust, business trust, limited liability company, cooperative, or association, and the successors and assigns of any of the foregoing and, unless the context otherwise requires, the singular will include the plural, and the masculine gender will include the feminine and the neuter, and vice versa.

**"Revenue" or "Revenues"** shall mean the gross revenue or gross revenues from the operation of the Convention Center.

**"Routine Maintenance"** means any preventative or cyclical maintenance that is an essential part of the ongoing care and upkeep of the land, building, and equipment contained within the building. Routine Maintenance shall also include any on-going maintenance necessary to prevent the failure of critical and non-critical building systems and equipment. Examples of Routine Maintenance include filter changes, painting, caulking, sealing, pest control, faulty hardware replacement, carpet cleaning, tile and grout cleaning, plumbing repairs replacement of faulty lights/fixtures/wiring, and upkeep of alarms, detectors, surveillance systems, and energy management systems. Minor repairs shall be defined as land, building and equipment repairs of a non-routine nature costing less than $5,000, which is to be increased by the consumer price index on the first of each year, per repair.

**"Term"** means that period commencing upon the Effective Date and ending on the conclusion of the twenty fifth (25th) full (twelve month) Fiscal Year following the Commencement Date, unless earlier terminated as provided in this Agreement.



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## Article II.

### ENGAGEMENT OF MANAGER; SCOPE OF SERVICES; RESPONSIBILITIES OF PARTIES

Section 2.01 **General Scope; Engagement of Manager.** The City engages Manager to promote, operate and manage the Convention Center for the Term. City and Manager shall execute and deliver a document in substantially the same form as is attached as **Exhibit C**, acknowledging, among other things, the actual date that the Commencement Date occurred.

Section 2.02 **Operation**. During the Term upon and subject to the terms and conditions of this Agreement, Manager accepts such engagement. Manager will endeavor to maximize taxable room revenue and the number of overnight stays by the operation of the Convention Center as the number of stays produce the most benefit for the community and the most room tax for the County to use to pay the bonds that the City is using to finance the construction of the Convention Center.

Section 2.03 **Specific Manager Management and Operation Responsibilities.** Manager, itself or through its designated contractors or vendors, will perform the following services (the "Services") after the Commencement Date and during the duration of the Term, which Manager has the sole, exclusive right and authority to perform without (except as otherwise expressly noted in this Agreement) any prior approval by the City:

(a) Management Execution. Manager shall be responsible for:

(i) Managing all aspects of the Convention Center in accordance with the terms and conditions of this Agreement;

(ii) Maintaining the Convention Center and its FF&E as provided in this Agreement;

(b) Personnel. Manager shall employ, supervise and direct all the Manager Employees as well as additional subcontractors or agents retained by Manager to assist with the provision of the Services.

(c) Operating and Financial Systems. Manager will implement operating and financial systems and controls for the Convention Center.

(d) Information Technology. Manager shall undertake all information technology functions for the Convention Center.

(e) Maintenance; Building Systems and Infrastructure. Manager is responsible for the Routine Maintenance of the of the Convention Center and its FF&E.

(f) Building Alterations and Improvements. No Capital Improvements shall be made to the Convention Center, or any part thereof, without first having obtained the written consent of the City. All Capital Improvements shall be the property of the City. Within a reasonable time following the Commencement Date, Manager shall perform an initial inspection of the Convention Center, and then periodic inspections each Agreement Year of the Term thereafter and identify to the City any needed or desired Capital Improvements. Manager shall not be liable for any failure to uncover the need for a Capital Improvement. The City shall have the right to undertake its own inspections to ensure the condition of the Convention Center is acceptable to the City and all necessary Capital Improvements are being undertaken.

(g) Food and Beverage Services. Manager, either by itself or by and through its designated third-party vendors, shall provide food and beverage services on an exclusive basis at the Convention Center, as needed. Manager may use affiliated companies, joint ventures, or subcontractors to provide consolidated services including food and beverage services.

(h) Payment of Operating Expenses; Covering Deficits. Manager shall pay, when due, all Operating Expenses. Manager will fund any Operating Losses and Manager may retain, for his services rendered hereunder, all Operating Profit.

(i) Financial and Administrative Services. Manager shall provide day-to-day financial and administrative services in support of its management activities, including internal budgeting and accounting, purchasing, property management, personnel management, contracting outside services, record-keeping, collections, billing, and similar services.

(j) Rates and Charges. The Manager shall establish all rental rates and charges relating to the Convention Center.

(k) Security Operations. Manager shall contract for security operations at the Convention Center, as needed.

(l) Permits. Manager and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, permits, certifications and other documents necessary for Manager's performance hereunder and shall pay any fees required therefore as an Operating Expense. Manager will immediately notify the City of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents which impairs the operation of the Convention Center or increases the City's liability under this Agreement. Notwithstanding, the City agrees to waive any and all City fees for licenses and permits associated with the Convention Center.

(m) Insurance. If requested by the City, Manager will assist the City in obtaining competitive quotes for commercial general liability insurance under Section 2.04. Manager will also reimburse the City or pay the premiums of City's liability insurance policy as an Operating Expense.

Section 2.04 **Specific City Responsibilities.** The City will undertake the obligations set forth herein during the Term of the Agreement. The City will oversee the performance of the City's responsibilities and obligations, as well as the exercise of its rights and obligations under this Agreement. Subject to the terms and conditions of this Agreement, the City shall promptly approve and/or execute agreements for non-Routine Maintenance, FF&E, Capital Equipment purchasers or Capital Improvements recommended by Manager, as from time to time become reasonably necessary to keep the Convention Center operating in the manner specified by this Agreement; use reasonable efforts to provide adequate parking in close proximity to the Convention Center for patrons of the Convention Center; and during larger events and conferences, work with the Manager to coordinate and provide appropriate traffic control for visitors of the Convention Center. City shall obtain and maintain for its protection a policy of commercial general liability insurance for the benefit of the City, with general liability limits which are not less than those described in Exhibit D. The Manager shall be listed as an additional insured. The cost of the general



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liability coverage only will be an Operating Expense. The City is responsible for obtaining property and casualty insurance on the Convention Center if desired, and at its expense.

Section 2.05 **Right of Entry Reserved.**

(a) City Entry. The City and its authorized representatives and agents shall have the right to enter all portions of the Convention Center to inspect same, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on or about the Premises, or to do any act or thing that the City may be obligated or have the right to do under this Agreement or otherwise; provided, however, that such entry is coordinated with Manager and does not unreasonably interfere or disrupt any licensed event activity or Manager's performance of its obligations under this Agreement. The City shall not interfere with the activities of Manager under this Agreement, and the City's actions shall be conducted in a manner designed to avoid disruption of Manager's work. Nothing in this Section shall impose or be construed to impose upon the City any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so. Nothing contained in this Section is intended or shall be construed to limit any other rights of the City under this Agreement or of the City acting in its Governmental Capacity.

(b) City Entry for Emergency or Public Safety. The City and its authorized representative and agents shall have access to the Convention Center at any and all times, with or without notice, for fire, police and/or emergency purposes, or to investigate any incidents involving personal injury or property damage, subject to the following requirements. The Operating Expenses of the Convention Center do not include any expenses incurred during periods of time when the Convention Center is taken over by the City and/or utilized for emergency purposes, and the City shall be responsible for all such expenses incurred during the period of use for emergency purposes. Should a licensee of Manager institute litigation for cancellation or postponement of its licensed event due to the City's use of the Convention Center, the City agrees to defend, indemnify and hold harmless Manager, its employees, agents, successors and assigns against any claim, cause of action, costs, expenses (including reasonable attorney's fees) liabilities or damages, including liquidated damages cancellation fees) (collectively "Losses") to the extent arising out of (i) use of the Convention Center by the City as contemplated herein; (ii) any negligence, reckless or willful misconduct of the City or City Employees except to the extent such Losses arise out of the negligent, reckless or willful misconduct of Manager. "Emergency purposes" as used herein shall include, but is not limited to, severe weather, extended power outages, floor, or other natural disasters, or war or an act of terrorism, that require the City to use the Convention Center to provide shelter, care and protection to residents, visitors and guests in the Muskegon area.

Section 2.06 **Negative Covenants of Manager.** Manager shall not do any of the following:

(a) Knowingly engage in or omit any act which would, to an ordinarily prudent person in the position of Manager, be reasonably foreseeable to cause or result in substantial or significant damage to the Convention Center;

(b) abandon the Convention Center during the Term of this Agreement (except in connection with the exercise of any rights of Manager under the Agreement);

(c) knowingly use or occupy or knowingly permit the Convention Center or any part thereof to be used or occupied for any unlawful use.

(d) knowingly manage, operate or maintain the Convention Center in violation of any applicable Law.

Section 2.07 **Structural Changes**. Manager shall have no authority to make any structural changes in the Convention Center or to make any other alterations or additions in or to any building or equipment therein without the consent of the City, except such emergency repairs or which are immediately necessary for the preservation and safety of the Convention Center or for the safety of the employees or other occupants, or which are required to avoid the suspension of any necessary service to the Convention Center.

Section 2.08 **Building Compliance.** Manager shall not be responsible for the compliance of the Convention Center or any of its equipment with the requirements of any building codes or with any statutes, ordinances, laws, rules, or regulations (including those relating to the existence and disposal of solid, liquid, and gaseous wastes, and toxic or hazardous substances) of any city, county, state, or federal governments or agencies, or any public authority or official thereof having jurisdiction over it. However, Manager shall notify the City promptly or forward to the City promptly any complaints, warnings, notices, or summonses received by Manager relating to such matters. The City represents that to the best of its collective knowledge the Convention Center will comply with all such requirements when constructed, and the City authorizes Manager to disclose the ownership of the Convention Center to any such officials and agrees to indemnify, defend, and hold Manager, its representatives, agents, and employees, harmless of and from all loss, cost, expense, and liability whatsoever which may be imposed on them by reason of any present or future violation or alleged violation of such laws, ordinances, rules, or regulations. Manager assumes no liability whatsoever for any acts or omissions of the City. Any such regulatory violations or hazards discovered by Manager shall be brought to the attention of the City in writing, and the City shall promptly cure them.

Section 2.09 **Capital Improvements; Capital Equipment.** The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases shall remain with the City. If requested by the City, the Manager will oversee any Capital Improvement projects.

Section 2.10 **Naming Revenue**. Any revenue and fees generated from the sale or lease of the name of the Convention Center shall be used toward the costs of improvements at the Convention Center and/or the adjacent LC Walker Arena. The City and Manager shall mutually agree on the use and applications of these funds.

Section 2.11 **Confidentiality.**

(a) Generally. All documents marked as "confidential" or "proprietary" and containing proprietary or confidential information furnished by a Party to the other, during the Term of the Agreement, shall be treated as proprietary or confidential to the extent permitted by Law and shall not be disclosed, either orally or in writing, to any third party, without the consent of the owner of such proprietary or confidential information or pursuant to Law or order of a court and will be used only in the performance of this Agreement. Notwithstanding the foregoing, proprietary or confidential information may be disclosed to the Party's attorney(s) or consultant(s). Proprietary or confidential information must be expressly designated or conspicuously marked as proprietary or confidential.



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(b) Public Records Act Request. If a Public Records Act request is made for information designated by Manager as proprietary or confidential, the City will provide Manager with written notice of such request so that Manager may seek a court order protecting the information. If Manager does not proceed with due diligence to seek a court order protecting the proprietary or confidential information, the City may release the information to the requesting party.

(c) Publicly Available Information. The restrictions on the use of proprietary information do not apply to information which the other Party can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to it by the other Party.

(d) Survival. The obligation to maintain proprietary or confidential information in confidence shall survive for a period of three (3) years after termination or expiration of this Agreement.

## ARTICLE III PRE-COMMENCEMENT PERIOD

Section 3.01 **Pre-Commencement Period.** During the Pre-Commencement Period, the City and Manager shall work cooperatively to plan for the opening of the Convention Center subject to the terms and conditions set forth herein.

Section 3.02 **Authority.** The City shall manage the construction of the Convention Center during the Pre-Commencement Period and it shall have no right or obligation to generate income from the Convention Center during this period. Manager shall provide the Pre-Commencement Period Services listed below during the Pre-Commencement Period including management of any Manager Employees. Except as otherwise agreed by the Parties in writing, other than the Pre-Commencement Period Services, Manager shall not be responsible for providing any other services in connection with the Convention Center during the Pre-Commencement Period.

Section 3.03 **Pre-Commencement Period Services.** During the Pre-Commencement Period, Manager shall provide the following services (the "Pre-Commencement Period Services"):

(e) Marketing Plan and Assistance with Event Booking. Develop and implement a marketing plan for the Convention Center.

(f) Financial Management. Establish systems for management of the financial matters of the Convention Center.

(g) Management Team. Install a core management team at the Convention Center, including the General Manager, to ensure that training, systems and procedures are in place prior to the Commencement Date.

(h) Other Services. Such other services as mutually agreed by the Parties.

## Article IV. CONSIDERATION

Section 4.01 **Consideration.** As full consideration for all Services provided by Manager pursuant to this Agreement, including but not limited to, Pre-Commencement Period services, marketing, Convention Center operations and management and food and beverage services, Manager shall be entitled to retain all revenues generated from the Convention Center during the Term of this Agreement.

## Article V. RECORDS AND REPORTS

Section 5.01 **Accounting.** Manager shall maintain full, accurate and complete financial and accounting books, records and reports ("Records") of the management, operation and maintenance of the Convention Center, including all revenues and expenditures in accordance with generally accepted accounting principles under this Agreement.

Section 5.02 **Records.**

(a) Maintenance of Records. Manager shall keep and preserve all Records for at least five years following the expiration or earlier termination of this Agreement, including all service orders, work orders, sales slips, rental agreements, purchase orders, sales books, cash register tapes, credit card invoices, duplicate deposit tapes and invoices, bank accounts, cash receipts and cash disbursements, bank books, and other evidence of Operating Revenues and Operating Expenses for such period.

(b) Bookkeeping System. Manager shall maintain a system of bookkeeping adequate for its operations hereunder. The systems and procedures used to maintain these Records shall also include a system of internal controls that is in accordance with sound business procedures.

(c) Access to Records. The City shall have the right to inspect and/or audit such books and records at reasonable times during normal business hours and upon reasonable prior notice to Manager. Manager shall give the City and the City's authorized representatives access to Manager's Records during reasonable business hours and upon reasonable advance notice. Should any of the Records be maintained on a computerized system, Manager shall provide the City with access, during normal business hours upon reasonable notice, to such Records generated by the computerized system. Manager shall maintain their Records in the City of Muskegon.

## Article VI. EMPLOYEES

Section 6.01 **General Manager.** Manager shall assign to the Convention Center a highly-qualified, competent, general manager capable of operating and empowered to operate the Convention Center as a first-class convention center (the "General Manager").

Section 6.02 **Payment of Employee Compensation, Benefits, Withholdings.** Manager will be solely responsible for all Manager Employee personnel-related matters including, without limitation, setting and paying as Operating Expenses their compensation, employment taxes, federal and state income tax withholding, and all employee benefits. All Manager Employee costs will be Operating Expenses

Section 6.03 **Independent Contractor.** Manager is acting hereunder as an independent contractor and not as an agent or employee of the City. No employee of Manager has been, is, or shall be an employee of the City by virtue of the contract, and Manager shall so inform each employee organization and each employee who is hired or retained under the contract. Manager shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the City.

## Article VII. REMEDIES; TERMINATION



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Section 7.01 **Delays.** In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection; acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

Section 7.02 **Breach.** Except for excusable delays as described in Section 7.01, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated.

Section 7.03 **Termination.**

(a) Termination for Breach of Contract.

(i) Except for excusable delays as provided in section 7.01, if either party materially fails to perform any of the provisions of this Agreement or so fails to make progress as to endanger timely performance of this Agreement, the non-defaulting party may give the defaulting party written notice of such default. If the defaulting party does not cure such default or provide a plan to cure such default which is acceptable to the non-defaulting party within ninety (90) days, then the non-defaulting party may terminate this Agreement and/or refrain from further performance of its covenants and agreements herein until the default is cured to the non-defaulting party's reasonable satisfaction; provided, however, if such failure to perform cannot reasonably be cured within such 90 day period, then a longer period of time shall be afforded to cure such breach, up to a total of 180 days, provided that the party in default is diligently seeking a cure.

(ii) In the event any default is not cured within the time period described in subsection (i) above, the non-defaulting party may cure the default to its reasonable satisfaction and be reimbursed by the defaulting party for the cost thereof.

(iii) If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that a party was not in default under the provisions of this Section, or that the default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued pursuant to Section 7.03(a).

(b) In the event this Agreement is terminated, Manager shall be entitled to retain all Operating Revenues earned pursuant to its management of the Convention Center under this Agreement through the conclusion of effective date of Termination (the new conclusion of the "Term") and shall be obligated to pay all Operating Expenses related to the management and operation of the Convention Center under this Agreement through the same date.

(c) Upon termination of this Agreement for any reason, or following the expiration of the Term, (i) Manager shall promptly discontinue the performance of all Services and surrender and vacate the Convention Center, (ii) Manager shall return all property, equipment and furnishings; (iii) Manager shall deliver or otherwise make available to City all data, electronic files, documents (including, without limitation, contracts and forms), reports, estimates, summaries, and other such information and materials with respect to the Convention Center as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process which are relevant to the future operations of the Convention Center, and, if necessary, shall execute all documents necessary to effectuate ownership rights in the same to City; and (iv) without any further action on the part of Manager or City, City shall, or shall cause the successor Convention Center manager to, assume all obligations arising after the date of such termination or expiration, under any, booking commitments and any other Convention Center agreements entered into by Manager in furtherance of its duties under this Agreement, and a release of Manager from such obligations.

(d) Subject to and without limiting any of the foregoing rights of Manager above, in the event that the City fails to perform or comply with any of its material terms, covenants, agreements or conditions hereof, and such failure is not cured during such 90 day notification period, , Manager shall be permitted to pursue any and all remedies available to it at Law or in equity in connection with such breach.

(e) The rights and remedies of the parties provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## Article VIII. GENERAL PROVISIONS

Section 8.01 **Manager's Transactions with Affiliates.** In connection with its management responsibilities under this Agreement relating to the purchase or procurement of equipment, materials, supplies, inventories and services for the Convention Center, Manager will have the right, but not the obligation, to purchase or procure from, or otherwise transact business with, an Affiliate of Manager without regard to conflict of interest rules because Manager is ultimately responsible for any net operating loss. Manager may also license the use of the Convention Center or any part thereof to itself or its Affiliates in connection with any event in the promotion of which Manager is involved, for free or for any fee it determines to be reasonable under the circumstances.

Section 8.02 **Informal Dispute Resolution Procedures.** The Parties desire to cooperate with each other in the management and operation of the Convention Center pursuant to the terms hereof. In keeping with this cooperative spirit and intent, the City and Manager shall attempt in good faith to resolve any dispute with respect to the Convention Center within fifteen (15) days following receipt by the other Party of notice of such dispute. If the Parties are unable to resolve the dispute within such 15-day period, and upon notice by a Party to the other Party, the dispute shall be referred to the City who shall attempt to resolve any such dispute prior to either Party initiating a legal suit.

Section 8.03 **Assignment; Binding Upon Successors and Assigns; No Third-Party Beneficiaries.**

(a) Assignment. Manager shall not, unless it has first obtained the prior written consent of the City, which may be withheld in City's sole judgment, (a) assign or otherwise alienate any of its rights under this Agreement, including the right to payment; or (b) delegate, subcontract, or otherwise



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transfer any of its duties under this Agreement; except that Manager may transfer some or all of the rights and obligations of this Agreement without the City consent but with notice to the City: (a) to the new owner or operator of the hotel it manages directly adjacent to the Convention Center; or (b) to Muskegon Convention Center, LLC, a company controlled by and affiliated with Manager.

(b) Binding Effect. This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the Parties hereto and each of their respective successors and permitted assigns.

(c) No Third-Party Beneficiaries. This Agreement shall not be construed as giving any person, other than the Parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such Parties and their successors and permitted assigns and for the benefit of no other person or entity.

(d) Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by all parties.

(e) Severability. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect the validity of any of the remaining clauses, provisions or sections of this Agreement.

(f) Assignment. Parkland may assign its interest in this Agreement to any subsequent owner or operator of the Holiday Inn and/or Shoreline Inn provided such subsequent owner or operator agrees in writing to be bound by the terms of this agreement.

(g) Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. An executed copy of this Agreement may be delivered by either party by electronic transmission and such execution and delivery shall be considered valid, binding and effective for all purposes.

(h) Captions. The captions and headings in this Agreement are for convenience only and in no way limit, define or describe the scope or intent of any provision of this Agreement.

(i) Further Assurances. The parties agree to execute such further agreements or instruments as may be reasonably necessary to implement the terms of this Agreement, so long as such agreements or instruments do not amend or modify the terms of this Agreement or either party's obligations hereunder. The parties further covenant to work in good faith to implement the terms of this Agreement, to permit the development of the Project in accordance with the terms hereof, and to meet as and when reasonably required in order to address issues of concern to either party in connection with the development of the Project and the matters contemplated under this Agreement.

(j) Drafting and Construction. Both parties to this Agreement have participated fully and equally in the negotiation and preparation hereof. Therefore, this Agreement shall not be more strictly construed or any ambiguities within this Agreement resolved against either party hereto.

(k) Limitation of Rights to Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors, legal representatives and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any rights of subrogation or action over or against any party to this Agreement.

Section 8.04 **Notices.** Any notice, consent or other communication given pursuant to this Agreement shall be in writing and shall be delivered, sent by personal delivery, overnight mail or certified or registered mail (return receipt requested and postage prepaid), addressed as follows:

To City: City of Muskegon
P. O. Box 356
Muskegon, MI 49443-0356
Attn: City Manager

And a copy to: Muskegon City Attorney
Parmenter Law
P.O. Box 786
Muskegon, MI 49443-0786
Attn: John Schrier

To Manager: Parkland Acquisition Two, LLC
75 West Walton, Suite A
Muskegon, MI 49444-1330
Attn: Jonathan L. Rooks
jon@parklandgr.com

With a Copy to: Charron Law
5020 East Beltline, NE, Ste. 201B
Grand Rapids, MI 49525
Attn: David W. Charron
dwcharron@charronlawoffice.com

or such other persons or addresses as either Party may from time to time designate by notice to the other. A notice, other communication or approval shall be deemed to have been sent and received (i) on the day it is delivered, or if such day is not a business day or if the notice is received after ordinary office hours (time of place of receipt), the notice, other communication or approval shall be deemed to have been sent and received on the next business day, or (ii) on the fourth business day after mailing if sent by U.S. registered mail.

Section 8.05 **Entire Agreement; Document Precedence.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior



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agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the Parties hereto with respect to the subject matter hereof.

Section 8.06 **Proprietary and Governmental Roles; Actions by Parties.** Except where clearly and expressly provided otherwise in this Agreement, the capacity of City in this Agreement shall be as the owner of the Convention Center only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Agreement on City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect the governmental capacities of the City, including, without limitation, enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions of each pursuant to federal, state or local law ("Governmental Capacity"). Whenever not expressly otherwise stated, (i) the City, when acting in its Proprietary Capacity, shall not unreasonably withhold its approval with respect to matters requiring its approval hereunder, and (ii) the City when acting in its Governmental Capacity, shall be permitted to utilize its sole discretion with respect to matters requiring its approval and nothing in this Agreement shall be construed to limit that discretion.

**CITY:**

**CITY OF MUSKEGON**

By: ____________________
Name: ____________________
Title: Mayor
Date: ____________________

By: ____________________
Name: ____________________
Title: Clerk
Date: ____________________

**MANAGER:**

Parkland Acquisition Two, LLC, a Michigan limited liability company

By: Jon Rooks
Name: Jon Rooks
Title: manager
Date: 12-6-18

**EXHIBIT A**

**PREMISES**

**EXHIBIT B**

**Booking Policy**

The Muskegon Convention Center is owned by the City of Muskegon, operated by Manager and financed primarily through hotel occupancy taxes. The facility is being developed with the primary objective of promoting and hosting events and activities which generate additional hotel occupancy tax as well as economic benefits to the city of Muskegon and Muskegon County.

**Mission Statement**

The Mission of the Muskegon Convention Center is economic development. By hosting state and regional conventions, meetings and trade shows, the Muskegon Convention Center infuses the local economy with new money and expanding business opportunities.

**Booking Hierarchy**

The Muskegon Convention Center serves as a venue for corporate and association-owned events, as well as for privately-owned events and ticketed events made available to the public. To remain competitive in the marketplace, the Muskegon Convention Center has established the following scheduling priorities to maximize the economic benefit of the Muskegon Convention Center facility and thereby retains the authority to negotiate the specific terms and conditions of its contracts. This policy provides a general outline of Muskegon Convention Center practices but is not intended to limit the ability of the Muskegon Convention Center to book events.

The following are the Muskegon Convention Center's Scheduling Priorities:

**Scheduling Priorities**

First Priority Events are state and regional conventions, trade shows and conferences, which generate maximum hotel room usage (250 room nights and above) and significant economic impact in the community. Qualifying factors considered to determine First Priority Events include the following:

- Peak hotel room utilization
- Multi day events
- Economic impact
- Event time of year
- Event history
- Revenue and attendance performance

Date requests for First Priority Events may be made as far in advance as the client deems necessary or appropriate. First Priority Events must have verifiable history of number of attendees, room nights used and event space needs.

Second Priority Events are local or regional corporate meetings, trade shows and conferences, which generate significant (100 to 250 room nights) hotel room usage and/or significant economic impact in the community. Qualifying factors considered to determine Second Priority Events include:

- Multi day events
- Ties to Local Corporations or local "Champions"
- Out of County attendees
- Time of year

Second Priority Events can be booked as much as 18 months before the date of the event with adequate, verifiable event history of hotel room nights used and number of attendees.

Third Priority Events are events with minimum room nights, which do not generate significant economic impact in the community. Examples include, but are not limited to, the following:

- Public or consumer events that are generally "ticketed" events
- Local corporate meetings
- Banquets
- Entertainment events
- Other community events which draw from or appeal to the public
- Events with no verifiable history/ First time events

**Guidelines for Third Priority Events**

- Date requests for Third Priority Events or exhibit halls may not be contracted more than 6 months in advance.
- The Executive Director of the Muskegon Convention Center will maintain and regularly update a "Free Sell Calendar" listing dates of limited hotel availability throughout the county when any priority event may be scheduled at any time.

Subject to the priorities set forth above, the Muskegon Convention Center General Manager is authorized to book and schedule business into the Muskegon Convention Center based upon best business practices.

These guidelines will be considered preliminary and will be subject to change through collaboration with our marketing partners, as we begin booking and learn more about the requirements of our target audiences.

The Muskegon Convention Center has the authority to accept or reject any proposed booking at its sole discretion, may reject any proposed booking which it finds to be not in the best business interest of Muskegon County or the city of Muskegon.

VR

**EXHIBIT C**

**COMMENCEMENT MEMORANDUM**

The undersigned, being parties to a certain Management Agreement dated _______________, 2018, for the Convention Center situated in the City of Muskegon, Muskegon County, Michigan, hereby acknowledge that the Commencement Date, as such term is defined in the Agreement, shall be ___________________, 20___.

IN WITNESS WHEREOF, the undersigned have executed this Commencement Date Memorandum on this ____ day of __________, 20____.

| | |
|---|---|
| CITY: | MANAGER: |
| CITY OF MUSKEGON | PARKLAND ACQUISITION TWO, LLC |
| By:______________________ | By:_________________________ |
| Its: _______________ | Its: _________________ |
| And By: _________________ | |
| Its: ________________ | |

JR

**EXHIBIT D**

**LIABILITY INSURANCE**

Commercial general liability insurance shall be obtained and maintained by the Manager in the name of the Manager, unless Manager elects to have the City obtain such insurance in its name, at Manager's expense. The City and Manager's affiliate, Muskegon Convention Center, LLC will be additional insureds on Manager's policy. Manager and its affiliate Muskegon Convention Center, LLC will be additional insureds on any policy in the City's name. In all cases, the cost of this insurance will be considered an Operating Expense of the Convention Center and shall be primary, and written to include the following coverages and for not less than the following minimums limits or greater if required by law:

1. **General Liability** (including Premises-Operations; Independent Contractors= Protective; Products and Completed Operations; Broad Form Property Damage) that covers bodily injury to persons other than employees and for damage to tangible property, including loss of use thereof, including all premises and operations.

| | | | |
|---|---|---|---|
| a. | Bodily Injury: | $3,000,000 | Each Occurrence |
| | | $3,000,000 | Any one person or organization |
| | | $3,000,000 | Aggregate |
| b. | Property Damage: | $3,000,000 | Each Occurrence |
| | | $3,000,000 | Any one person or organization |
| | | $3,000,000 | Aggregate |

c. General Aggregate shall be included and shall not be less than $3,000,000. Policy shall be endorsed to have General Aggregate apply to Convention Center only.

d. **Workers Compensation** including Employers Liability to cover employee injuries or disease compensable under the laws of the State of Michigan:

| | | |
|---|---|---|
| [X] | State Statutory | |
| [X] | Employer's Liability | $100,000 each accident |
| | | $100,000 Disease, Aggregate |
| | | $500,000 Disease, Each Employee |

e. **Automobile Liability** (owned, non-owned, hired):

a. Special Requirements:

1. All owned, hired and non-owned vehicles including the loading or unloading thereof.



VR

| | | | |
|---|---|---|---|
| 2. | Bodily Injury: | \$500,000 | Each Person |
| | | \$1,000,000 | Each Accident |
| | Property Damage: | \$500,000 | |

2. No property and casualty insurance is required to be maintained by Manager for the benefit of the City, or on the Convention Center. The City shall separately insure or provide for loss to the structure of the Convention Center at the City's expense.

3. The City and Manager waive all subrogation rights against each other for any insurance which is maintained by either party to this Agreement, and regardless of whether such insurance is mandated by this Agreement.

JR

AGENDA ITEM NO. _______________
CITY COMMISSION MEETING __________________________

**TO:** Honorable Mayor and City Commissioners

**FROM:** Frank Peterson, City Manager

**DATE:** January 16, 2019

**RE:** LC Walker Arena – HVAC Upgrades

**SUMMARY OF REQUEST:**
City staff is requesting approval of the attached proposal to undertake significant upgrades to the HVAC system at the LC walker Arena. The Arena's current steam boiler system is original to the building and is both inefficient and unreliable. The upgrade will result in significant utility savings annually. This improvement will be combined with recently-approved improvements to the roof and dehumidification system and staff will be presenting Commissioners with financing options at the February Work Session. The DDA has indicated initial support of $215,000 annually to assisting with the annual debt payment associated with these improvements.

**FINANCIAL IMPACT:**
$697,894

**BUDGET ACTION REQUIRED:**
None at this time.

**STAFF RECOMMENDATION:**
To authorize the City Manager to accept the proposal from Hurst Mechanical.

**COMMITTEE RECOMMENDATION:**
None.

HURST MECHANICAL

1-800-GO-HURST
1-800-464-8778
Fax (616) 785-7900
2330 Lake Ave
North Muskegon, MI 49445

January 04, 2019

City of Muskegon
933 Terrace St.
Muskegon, MI 49443
Attn: Franklin J. Peterson
O: 231-724-6724
frank.peterson@shorelinecity.com
**Subject: LC Walker Arena- Replacement of Heating Boilers, and HVAC Upgrade Proposal**

Dear Frank:

First of all, thank you for the opportunity to be of continued service! The following is our proposal to replace the 59 Year Old Steam Heating Boilers, and to upgrade them to new High Efficiency Condensing Heating Boilers. The current boilers have outlived their expected useful life by 30+ years, and the new High Efficiency boilers will offer you a significant savings in utility costs, which will help you reduce your operating expenses moving forward. This proposal also includes the replacement/upgrade of several other HVAC systems which have already failed, and are in serious need of replacement. The scope of work is to consist of the following:

- Provide labor, equipment, and materials to disassemble and remove (2) existing steam heating boilers, and venting. Includes asbestos abatement of the boiler insulation, refractory, gaskets, and the piping insulation within the boiler room. Existing equipment pads to remain.
- Provide labor, equipment, and materials to install (2) new High Efficiency Condensing Viessmann Vitocrossal 300 Hydronic Heating Boilers. Each of your new boilers will include stainless steel heat exchangers, a 10:1 turn-down ratio, fully modulating burners, motorized isolation valves, Vitotronic digital boiler control, boiler control with outdoor reset, integral cascade control to optimize system performance, and a Vitogate 300 for Bacnet or Modbus integration to interface with a new Building Management System.
- Includes reconnection of the existing boiler electrical service and gas lines to your new boilers.
- Provide and install new boiler vent stacks serving both new boilers.
- Provide labor, equipment, and materials to install (4) new Wilo Stratos Giga High Efficiency ECM Boiler System Pumps, (2) serving the boilers, and (2) serving as system pumps.
- Provide and install (1) Low Loss Header, (2) condensate neutralizers, (1) new ASME expansion tank, (1) air separator, (1) auto air vent, and (1) high capacity air vent.
- Provide labor, equipment, and materials to remove the existing steam heating coils in the Arena's (2) Haakon HVAC units, and install new hydronic heating coils, appropriately sized to work in conjunction with your new boilers. We also plan to provide a new Wilo Stratos Giga High Efficiency coil pump at each unit (electrical by others), as well as a 3-way heating valve with each

new coil, to provide excellent temperature control. We also plan to provide temperature controls for both units, to ensure these units are operating at peak performance and efficiency.

- We plan to utilize most of the existing steam heating lines and most of the condensate return lines throughout the building, to serve as hydronic supply/return lines. We do plan to install new return lines to each of the (2) Haakon Heating Coils, to ensure proper flow to your new coils in these units.
- Provide and install (1) new Fernox 2" commercial filter, (1) new Harmsco side stream cartridge filter, and (1) new pot feeder with funnel. Prior to system startup we also plan to circulate system cleaner to flush all of the existing steam and condensate lines, and we will also introduce system conditioner to protect the integrity of the system moving forward.
- Provide labor, equipment, and materials to replace (4) of your split AC systems which have failed. We plan to install (4) new systems equal in capacity, (3) new Fujitsu 3 ton Mini Split Heat Pump Systems, and (1) new Heil 5 ton AC system. Each new system includes system evacuation, refrigerant charging, and start up.
- Provide labor to remove (3) abandoned condensing units, and disconnect/reconnect (5) AC split systems to remain serving the concourse areas, to accommodate roofing project.
- Provide labor, equipment, and material to remove the (2) air handling units serving Peak Training, which have rusted out and are leaking. We plan to install (2) new Daikin AHU's, utilizing the existing duct heaters and AC condensing units, reconnect to the existing ductwork, electrical, refrigerant line sets, and gas lines. Includes evacuation, refrigerant charging, and start up.
- One year parts and labor warranty, and equipment mfr. warranty apply for each system.
- Proposal excludes: Overtime, roofing, structural or general trades work, and engineered drawings.
- Proposal includes: State Boiler Permit Fee, Mechanical Permit Fee, and crane service.

**Your Investment: $697,894.00**

**Please note:*

*Any additional work above and beyond the scope of work described will be considered additional work, and will be performed on a time & material basis, and invoiced accordingly.*

Thank you for the opportunity to prepare this proposal for you. If we may be of further service, or if there's anything you'd like to discuss, please feel free to call me at 231-286-3110.

Sincerely,

Adam Schultz

Adam Schultz
aschultz@hurstind.com
231-286-3110

**_Approval Signature_** | **_PO#_** | **_Date_**

# Commission Meeting Date: January 22, 2019

Date: January 24, 2019

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Public Hearing - Request to Establish an Obsolete Property District – 285 W Western Ave

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SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Parkland Muskegon, Inc, has requested the establishment of an Obsolete Property District for their property at 285 W Western Ave. The establishment of the Obsolete Property District would allow them to apply for an Obsolete Property Rehabilitation Exemption Certificate.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the creation of the district.

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. 2019-07(A)

**A resolution establishing an Obsolete Property Rehabilitation District.**

The City Commission of the City of Muskegon hereby RESOLVES:

## Recitals

A. The City of Muskegon has been designated as a qualified local government unit for the purpose of establishing Obsolete Property Rehabilitation Districts and approving Applications for Obsolete Property Rehabilitation Exemption Certificates.

B. The area located in the land described in this resolution is known to the City Commission and is clearly characterized by the presence of obsolete commercial property, and the land and improvements are obsolete commercial property.

C. Notice has been given by certified mail to the owners of all real property within the proposed Obsolete Property Rehabilitation District and a hearing has been held offering an opportunity to all owners and any other resident or taxpayer of the City to appear and be heard. Said notice was given at least ten (10) days before the hearing.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. That the property described in this resolution and proposed as an Obsolete Property Rehabilitation District is characterized by obsolete commercial property.

2. That the obsolete commercial property, the subject of this resolution, as is described in Attachment A.

3. That the City Commission hereby establishes an Obsolete Property Rehabilitation District on the lands and parcels set forth in the attached description.

This resolution passed.

Ayes Warren, German, Rinsema-Sybenga, Turnquist, Johnson, and Gawron

Nays None

CITY OF MUSKEGON

BY: ______________________________
Stephen J. Gawron
Mayor

ATTEST: ______________________________
Ann Meisch
Clerk

## CERTIFICATION

This resolution was adopted at a meeting of the City Commission, held on January 22, 2019. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By ____________________________
Ann Meisch, City Clerk

## ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON DOWNTOWN MUSKEGON DEVELOPMENT CENTER NO 2 UNIT 1 SBJT TO ESMNT FOR OVERHEAD/UNDERGROUND ELECTRIC LNS RECOR'D 3724/701 10-31-08 3794/882 ASSIGNMENT TO CITY OF MUSKEGON OF ALL INTERESTS & ASSUMPTION OF OBLIGATIONS OF THE FIRST ST RECIPROCAL ESMNT RECOR'D 1958/602

**OPRA Attachment Responses for Parkland Muskegon, Inc.**

**(a). General Description of obsolete facility:**

- The existing eight story building contains approximately 52,000 square feet. The building was constructed in 1919 to house the former Hackley Union National Bank and has housed various banks through the years. The building had been vacant for years until the recent rehabilitation of floors three through eight into one bedroom and two bedroom market rate residential units. The first and second floors are in need of significant rehabilitation prior to any occupancy.

**(b). General description of the proposed use of the rehabilitated facility:**

- The proposed overall mixed-use project includes the conversion of a vacant building into approximately 52,000 fully reactivated square feet. The rehabilitated building will house commercial space on floors one and two. Floors three through eight have been rehabilitated into a mix of one bedroom and two bedroom market rate apartments that are subject to a Neighborhood Enterprise Zone Abatement. This OPRA request seeks abatement for only the ground floor and 2nd floor commercial space.

**(c). Description of the general nature and extent of the rehabilitation to be undertaken:**

- The future commercial space requires an entire overhaul in order to ready the site for prospective tenants. The project will include interior redevelopment of the approximately 9,100 sf of commercial and office space that will include tenant buildout.

**(d). Descriptive list of fixed building equipment that will be part of rehabilitated facility:**

- It is expected that the following equipment will be replaced or repaired as a result of the proposed rehabilitation:

| | |
|---|---|
| - Fire Suppression | $ 14,100 |
| - HVAC System | $ 118,000 |
| - Electrical | $ 109,000 |

**(e). A time schedule for undertaking and completing the rehabilitation of the facility.**

- The project will begin in Winter 2019 and is expected to be completed 6 months later.

**(f). A statement of the economic advantages expected from the exemption.**

- The exemption will allow the developer to defray some of the annual operating expenses associated with the increased taxes as a result of the proposed project. This will allow the developer to complete this successful project in a timely manner, stabilize following construction, and ultimately benefit the taxing jurisdictions in the long run. Without the exemption benefit, the project would not be feasible and would not take place.

## Parkland Muskegon, Inc. Buildout Costs

| | |
|---|---|
| **Commercial Space #1**- 1,700 SF (Insurance Company) | $97,800 |
| **Commercial Space #2** – 1,617 SF (Grocery Store) | $93,000 |
| **Commercial Space #3** – 3,332 SF (Credit Union) | $194,550 |
| **Office Space #1** – 1,332 SF | $66,600 |
| **Office Space #2** – 1,130 SF | $56,500 |
| **Total Costs** | **$508,450** |

**Affidavit of Functional Obsolescence**

**Project**

Former Hackley Union National Bank Building
285 West Western Avenue
Muskegon, MI 49440

**Inspection**

I inspected the subject property on October 8, 2018, with Jon Rooks of Parkland Muskegon Development, Justin George and Dave Becker from the Muskegon County Equalization Department.

The building described in this project is the former Hackley Union National Bank Building which sits on approximately a quarter acre lot in the City of Muskegon at 285 West Western Avenue at the Southeast corner of 1st Street and West Western Avenue in downtown Muskegon.

The building is one of the oldest structures located within the downtown business district of the City of Muskegon and was originally utilized by Hackley Union National Bank and then by Comerica Bank as a branch location until approximately twenty years ago, when it was left vacant and abandoned.

Constructed in 1918, the structure's eight story exterior façade consists of brick and stone veneer over brick and concrete with a flat composite roof covering.

This affidavit of functional obsolescence is limited to the first and second floors of the building, which originally housed the bank's lobby, teller windows, hallways, large bank vault and some offices.

Recent improvements to the building have been confined to the upper six floors and include apartment build-outs for 47 new market rate apartments with major upgrades and repairs to the buildings' HVAC system, roof, elevator and new energy efficient exterior windows.

The building's first two floors have been gutted down to the original block, brick and concrete with the large bank vault still in its' original condition. These two floors stand in need of restoration, repairs and finish construction work to make the spaces viable.

The interior of the structure's first two floors suffer from chopped-up floor spaces, expansively high ceilings, unusable loft space, absence of interior walls, flooring, heating and cooling apparatuses and restroom facilities. All of these conditions would need to be addressed in order to make these two floors viable for any proposed new use(s).

**Certification of Functional Obsolescence**

It is this assessor's expert opinion that this property's first two floors are functionally obsolete and are unable to adequately perform the function for which they were intended when originally constructed due to a substantial loss in value resulting from the following conditions: 1.) Deficiencies in design and 2.) Changes in technology; that require alternate construction to accommodate modern banking equipment, as evidenced by the fact that Comerica Bank chose not to remodel this facility for its future needs, but instead, chose to build an entirely new building in another location to service the needs of their customers.

Additionally, due to its specific, but outdated design, the first two floors of this building will require extensive modification and renovation to functionally service a new business or organization, i.e.; the conversion of the bank vault to a newly defined purpose, the reconstruction of the floors, walls, ceilings and substructure to accommodate office or retail space and the construction of new restrooms to accommodate handicap accessibility.

This opinion is made from consideration of the information contained in this report.

**Disclaimer**

This opinion is based upon the individual research and professional training and experience of the signer. It does not necessarily reflect the official opinion of the local assessor's office as used in the determination of value for the current and/or any future assessment roll.

Donna VanderVries

Donna B. Vandervries, CMAE 4
Director, Muskegon County Equalization Dept.

11/20/18
Date

Commission Meeting Date: January 15, 2019

Date: January 15, 2019

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Public Hearing - Request to issue an Obsolete Property Certificate –Parkland Muskegon, Inc – 285 W Western Ave

---

SUMMARY OF REQUEST:

Pursuant to Public Act 146 of the Michigan Public Acts of 2000, Parkland Muskegon, Inc. has requested the issuance of an Obsolete Property Certificate for their property located at 285 W Western Ave. Total capital investment for this project is estimated to be $508,450 and tenants will include a market and a credit union. The investment amount qualifies the applicant for a 12-year abatement.

FINANCIAL IMPACT:

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

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff recommends approval of the Obsolete Property Rehabilitation Exemption Certificate

COMMITTEE RECOMMENDATION:

None

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

RESOLUTION NO. 2019-07(B)

A resolution approving the application for an Obsolete Property Rehabilitation Exemption Certificate by Parkland Muskegon, Inc.

The City Commission of the City of Muskegon hereby RESOLVES:

## Recitals

A. The City Commission has received an Application for an Obsolete Property Rehabilitation Exemption Certificate from Parkland Muskegon, Inc, to apply to the improvements located in an Obsolete Property Rehabilitation District established by previous resolution. All items described under "Instructions" (a) through (f) of the application for Obsolete Property Rehabilitation Exemption Certificate have been provided to the City of Muskegon, the Qualified Local Government Unit, by the applicant.

B. The City of Muskegon is a qualified local governmental unit as determined by STC Bulletin No. 9 of 2000, dated July 12, 2000.

C. An Obsolete Property Rehabilitation District in which the application property is located was established after a hearing on January 22, 2019.

D. The taxable value of the property proposed to be exempt, plus the aggregate taxable value of properties already exempted under PA 146 of 2000 and under PA 198 of 1974, does not exceed five percent (5%) of the total taxable value of the City of Muskegon.

E. In the event it is determined that the said taxable values do exceed five percent (5%), the City Commission determines further that the said excedence will not have the effect of substantially impeding the operation of the City of Muskegon or impairing the financial soundness of any affected taxing units.

F. This resolution of approval is considered by the City Commission on January 22, 2019, after a public hearing as provided in Section 4(2) of PA 146 of 2000. The hearing was held on this date.

G. The applicant, Parkland Muskegon, Inc is not delinquent any taxes related to the facility.

H. The exemption to be granted by this resolution is for twelve (12) years and no extensions will be granted.

I. The City Commission finds that the property for which the Obsolete Property Rehabilitation Exemption Certificate is sought is obsolete property within the meaning of Section 2(h) of Public Act 146 of 2000 in that the property, which is commercial, is functionally obsolete. The City has received from the applicant all the items required by Section 9 of the application form, being the general description of the obsolete facility, a general description of the proposed use, a description of the general nature and extent of the rehabilitation to be undertaken, a descriptive list of fixed building equipment that will be part of the rehabilitated facility, a time schedule for undertaking and complete the rehabilitation, and statement of the economic advantages expected from the exemption.

J. Commencement of the rehabilitation has not occurred before the establishment of the district.

K. The application relates to a rehabilitation program that when completed will constitute a rehabilitated within the meaning of PA 146 of 2000 and will be situated within the Obsolete Property Rehabilitation District established by the City under PA 146 of 2000.

L. Completion of the rehabilitated facility is calculated to and will, at the time of the issuance of the Certificate, have the reasonable likelihood to increase commercial activity and create employment; it will revitalize an urban area. The rehabilitation will include improvements aggregating more than ten percent (10%) of the true cash value of the property at the commencement of the rehabilitation.

M. The City Commission determines that the applicant shall have twenty-four (24) months to complete the rehabilitation. It shall be completed by January 22, 2021, or two years after the Certificate is issued, whichever occurs later.

N. That notice pursuant to statute has been timely given to the applicant, the assessor for the City of Muskegon, representatives of the affected taxing units and the general public.

NOW, THEREFORE, THE CITY COMMISSION RESOLVES:

1. Based upon the statements set forth in, and incorporating the recitals to this resolution, the City Commission hereby approves the application filed by Parkland Muskegon, Inc, for an Obsolete Property Rehabilitation Exemption Certificate, to be effective for a period of twelve (12) years and no extensions will be granted;

2. BE IT FURTHER RESOLVED, that this resolution of approval relates to the property set forth in Attachment A, the legal description containing the facilities to be improved;

3. BE IT FURTHER RESOLVED, that, as further condition of this approval, the applicant shall comply with the representations and conditions set forth in the recitals above and in the application material submitted to the City.

This resolution passed.

Ayes: Warren, German, Rinsema-Sybenga, Turnquist, and Gawron

Nays: Johnson

CITY OF MUSKEGON

BY: ________________________________
Stephen J. Gawron
Mayor

ATTEST: ________________________________
Ann Meisch
Clerk

CERTIFICATE

This resolution was adopted at a meeting of the City Commission held on January 22, 2019. The meeting was properly held and noticed pursuant to the Open Meetings Act of the State of Michigan, Act 267 of the Public Acts of 1976.

CITY OF MUSKEGON

By ____________________________

Ann Meisch, City Clerk

## ATTACHMENT A: PROPERTY DESCRIPTION

CITY OF MUSKEGON DOWNTOWN MUSKEGON DEVELOPMENT CENTER NO 2 UNIT 1 SBJT TO ESMNT FOR OVERHEAD/UNDERGROUND ELECTRIC LNS RECOR'D 3724/701 10-31-08 3794/882 ASSIGNMENT TO CITY OF MUSKEGON OF ALL INTERESTS & ASSUMPTION OF OBLIGATIONS OF THE FIRST ST RECIPROCAL ESMNT RECOR'D 1958/602

AGENDA ITEM NO. _______________
CITY COMMISSION MEETING __________________________

**TO:** Honorable Mayor and City Commissioners

**FROM:** Frank Peterson, City Manager

**DATE:** January 16, 2019

**RE:** Convention Center Construction Management Services – Preconstruction Agreement

**SUMMARY OF REQUEST:**
City staff is requesting approval of the attached agreement with Clark Construction Company to assist in the preconstruction phase of the convention center development. It is important to bring the preferred construction manager onto the project during the final design phases to help ensure a quality project that can be completed on time and on budget. Staff anticipates returning to the Commission in the coming weeks with the contract to award the Construction Management Services contract to the same contractor.

**FINANCIAL IMPACT:**

**BUDGET ACTION REQUIRED:**
None at this time.

**STAFF RECOMMENDATION:**
To approve the agreement and authorize the Mayor and Clerk to sign.

**COMMITTEE RECOMMENDATION:**
None.

# AIA® Document A133™ – 2009

## *Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

**ADDITIONS AND DELETIONS:**
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**AGREEMENT** made as of the 17th day of January in the year 2019
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:
*(Name, legal status and address)*

City of Muskegon
Frank Peterson – City Manager
933 Terrace St.
Muskegon, MI 49440

and the Construction Manager:
*(Name, legal status and address)*

Clark Construction Company
3535 Moores River Dr.
Lansing, MI 48911

for the following Project:
*(Name and address or location)*

Muskegon Convention Center
939 Third St.
Muskegon, MI 49440

The Architect:
*(Name, legal status and address)*

Progressive AE
1811 4 Mile Rd. NE
Grand Rapids, MI 49525

The Owner's Designated Representative:
*(Name, address and other information)*

Jeff Salowitz
Construction Simplified
859 W. Fulton
Grand Rapids, MI 49504

The Construction Manager's Designated Representative:
*(Name, address and other information)*

Dan Korte
3535 Moores River Dr.
Lansing, MI 48911

The Architect's Designated Representative:
*(Name, address and other information)*

Jim Horman
Progressive AE
1811 4 Mile Rd. NE
Grand Rapids, MI 49525

The Owner and Construction Manager agree as follows. This document is to procure Preconstruction Services for Clark Construction. Additional project details and revisions to Contract Terms and Conditions will be specified in a forthcoming GMP Amendment to this Agreement.

## TABLE OF ARTICLES



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

**§ 2.1.1** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

**§ 2.1.5.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

**§ 2.1.7** The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**§ 2.1.8 Extent of Responsibility**
The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 2.1.9 Notices and Compliance with Laws**
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**
**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- **.1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- **.4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- **.5** A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

**§ 2.3 Construction Phase**
**§ 2.3.1 General**
**§ 2.3.1.1** For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 2.3.1.2** The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

**§ 2.3.2 Administration**
**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

**§ 2.3.2.2** If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

**§ 2.3.2.4** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

**§ 2.4 Professional Services**
Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 2.5 Hazardous Materials**
Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

**§ 3.1 Information and Services Required of the Owner**
**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 3.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

**§ 3.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 3.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 3.1.4.1** The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 3.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 3.1.4.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 3.1.4.4** During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 3.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

**§ 4.1.1** For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Total for Preconstruction Services: Thirty-eight thousand three hundred and sixty-four dollars and 00/100 cents ($38,364)

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within five ( 5 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ **4.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
*(Insert rate of monthly or annual interest agreed upon.)*

0.0 %

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

§ **5.1** For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ **5.1.1** The Construction Manager's Fee:
*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

§ **5.1.2** The method of adjustment of the Construction Manager's Fee for changes in the Work:

§ **5.1.3** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ **5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed percent ( %) of the standard rate paid at the place of the Project.

§ **5.1.5** Unit prices, if any:
*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|

**§ 5.2 Guaranteed Maximum Price**

§ **5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

§ **5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

§ **5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

**§ 5.3.5** If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

**§ 6.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 6.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

**§ 6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

**§ 6.2.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

**§ 6.3 Subcontract Costs**
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

**§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**
**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**
**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 6.6 Miscellaneous Costs**
**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

**§ 6.7 Other Costs and Emergencies**

**§ 6.7.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

**.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;

**.2** Expenses of the Construction Manager's principal office and offices other than the site office;

**.3** Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

**.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

**.5** Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

**.6** Any cost not specifically and expressly described in Sections 6.1 to 6.7;

**.7** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

**.8** Costs for services incurred during the Preconstruction Phase.

**§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.10 Related Party Transactions**
**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

**§ 6.11 Accounting Records**
The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
**§ 7.1 Progress Payments**
**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**§ 7.1.3** If an Application for Payment is received by the Architect and the Owner, payment shall be made by the Owner not later than thirty ( 30 ) days after the Architect receives the Application for Payment.
*(Federal, state or local laws may require payment within a certain period of time.)*

**§ 7.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 7.1.7** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- **.1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- **.2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- **.3** Add the Construction Manager's Fee, less retainage of zero percent ( 0.0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- **.4** Subtract retainage of ten percent ( 10.0 %) from that portion of the Work that the Construction Manager self-performs;
- **.5** Subtract the aggregate of previous payments made by the Owner;
- **.6** Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- **.7** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

**§ 7.1.8** The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 7.1.9** Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- **.1** the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- **.3** a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.
*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

| Type of Insurance or Bond | Limit of Liability or Bond Amount ($0.00) |
| --- | --- |

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

**§ 9.3 Initial Decision Maker**
The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**ARTICLE 10 TERMINATION OR SUSPENSION**
**§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**
**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

**.1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
**.2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
**.3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction

Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

**§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**
Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.3 Suspension**
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS
**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

**§ 11.2 Ownership and Use of Documents**
Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**
Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.4 Assignment**
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5** Other provisions:

## ARTICLE 12 SCOPE OF THE AGREEMENT

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

**.1** AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**.2** AIA Document A201–2007, General Conditions of the Contract for Construction

**.3** AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

**.4** AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

**.5** Other documents:
*(List other documents, if any, forming part of the Agreement.)*

1. Progressive AE Project / Design Deliverable Scheduled dated Oct. 3, 2018
2. Clark Construction Preconstruction Staffing Schedule as submitted in the RFP Response dated Dec 17, 2018
3. Construction Simplified "Contract Understanding Discussion" letter, as amended Jan 17, 2019

This Agreement is entered into as of the day and year first written above.

| | |
|---|---|
| **OWNER** *(Signature)* | **CONSTRUCTION MANAGER** *(Signature)* |
| *(Printed name and title)* | *(Printed name and title)* |

# *Additions and Deletions Report for*
*AIA® Document A133™ – 2009*

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:52:20 ET on 01/18/2019.

**PAGE 1**

**AGREEMENT** made as of the 17th day of January in the year 2019

...

City of Muskegon
Frank Peterson – City Manager
933 Terrace St.
Muskegon, MI 49440

...

Clark Construction Company
3535 Moores River Dr.
Lansing, MI 48911

...

Muskegon Convention Center
939 Third St.
Muskegon, MI 49440

...

Progressive AE
1811 4 Mile Rd. NE
Grand Rapids, MI 49525

...

Jeff Salowitz
Construction Simplified
859 W. Fulton
Grand Rapids, MI 49504

**PAGE 2**

Dan Korte
3535 Moores River Dr.
Lansing, MI 48911

...

Jim Horman
Progressive AE
1811 4 Mile Rd. NE
Grand Rapids, MI 49525

...

The Owner and Construction Manager agree as follows. This document is to procure Preconstruction Services for Clark Construction. Additional project details and revisions to Contract Terms and Conditions will be specified in a forthcoming GMP Amendment to this Agreement.

**PAGE 8**

Total for Preconstruction Services: Thirty-eight thousand three hundred and sixty-four dollars and 00/100 cents ($38,364)

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within five ( 5 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**PAGE 9**

**§ 4.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

0.0 %

**PAGE 13**

**§ 7.1.3** ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month.~~ If an Application for Payment is received by the Architect ~~after the application date fixed above,~~ and the Owner, payment shall be made by the Owner not later than ~~(~~ thirty ( 30 ) days after the Architect receives the Application for Payment.

**PAGE 14**

**.3** Add the Construction Manager's Fee, less retainage of zero percent ( 0.0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

**.4** Subtract retainage of ten percent ( 10.0 %) from that portion of the Work that the Construction Manager self-performs;

**PAGE 18**

1. Progressive AE Project / Design Deliverable Scheduled dated Oct. 3, 2018
2. Clark Construction Preconstruction Staffing Schedule as submitted in the RFP Response dated Dec 17, 2018
3. Construction Simplified "Contract Understanding Discussion" letter, as amended Jan 17, 2019

# *Certification of Document's Authenticity*

*AIA® Document D401™ – 2003*

I,  , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:52:20 ET on 01/18/2019 under Order No. 1733265759 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

______________________________

*(Signed)*

______________________________

*(Title)*

______________________________

*(Dated)*

**COMMISSION MEETING DATE: 1-22-2019**

**TO:** Honorable Mayor and Commissioners

**FROM:** Jeffrey Lewis, Director of Public Safety

**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1806974

---

**SUMMARY OF REQUEST**: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **157 ALLEN AVE** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days It is further requested that administration be directed to obtain bids for the demolition of the structure 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.

Case# EN1806974DB Project Address: 157 Allen Ave. Muskegon MI.

Location and ownership: This structure is located on Allen Ave. between Jay St. and Spring St. and is owned by COUNTY OF MUSKEGON TREASURER.

Staff Correspondence: A dangerous building inspection was conducted on 12-17-2018. On 1-3-2019 the HBA declared the structure substandard and dangerous.

**Financial Impact**: CDBG Funds

**Budget action required**: None

**State Equalized value**: $ 0 (Entire property)

**Estimated cost to repair**: $

**Staff Recommendation**: To concur with the Housing Board of Appeals decision to demolish.

Additional Information (History):

Owner Contact: COUNTY OF MUSKEGON TREASURER

Permits obtained:
NA

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

Compile Case: For D.B. Designation

MUSKEGON

West Michigan's Shoreline City
www.shorelinecity.com

# CITY OF MUSKEGON INSPECTIONS

## HOUSING BOARD OF APPEALS

## NOTICE OF HEARING

Date: 12/21/2018

Address of the Property: 157 ALLEN AVE

TO: COUNTY OF MUSKEGON TREASURER, 173 E APPLE AVE STE 104, MUSKEGON, MI 49442

Please take notice that on **Thursday,Jan 3**, the City of Muskegon Housing Board of Appeals will hold a hearing at 933 Terrace, Muskegon, MI at 5:30 p.m., and at the said hearing consider whether or not the following structure should be determined to be dangerous, substandard and a nuisance, and demolished, or repaired.

You are receiving this notice because you have failed to provide an approved written plan of abatement for said property.

At the hearing on **Thursday,Jan 3** at 5:30 p.m., at the Muskegon City Hall, 933 Terrace Street, Muskegon, Michigan, you may appear and present any relevant evidence to the Housing Board of Appeals and have counsel of your choice present, if you desire, to show cause why the structure should not be allowed and ordered to be demolished.

If you have any questions regarding this notice, please contact Inspector Jay Paulson at 231-724-3900 or email at jpaulson@safebuilt.com

CITY OF MUSKEGON INSPECTION DEPARTMENT, ON BEHALF OF THE HOUSING BOARD OF APPEALS

By______________________________

Jeffrey Lewis, Director of Public Safety

MUSKEGON
West Michigan's Shoreline City
www.shorelinecity.com

# CITY OF MUSKEGON INSPECTIONS

## AFFIDAVIT OF MAILING AND POSTING

STATE OF MICHIGAN
COUNTY OF MUSKEGON

Jeffrey Lewis, being duly sworn, states that he/she mailed by certified mail, a copy of the attached Notice of Hearing before the Housing Board of Appeals to the owners and interested parties set forth in the notice. The said notice dated ~~12/22/2016~~ was mailed on ~~12/22/2016~~.

______________________________
Jeffrey Lewis, Director of Public Safety

Also, the undersigned states that he/she posted a copy of the above mentioned notice on the structure located at 157 ALLEN AVE on this 22nd day of ~~December, 2016~~.

______________________________
Lance Bonifield

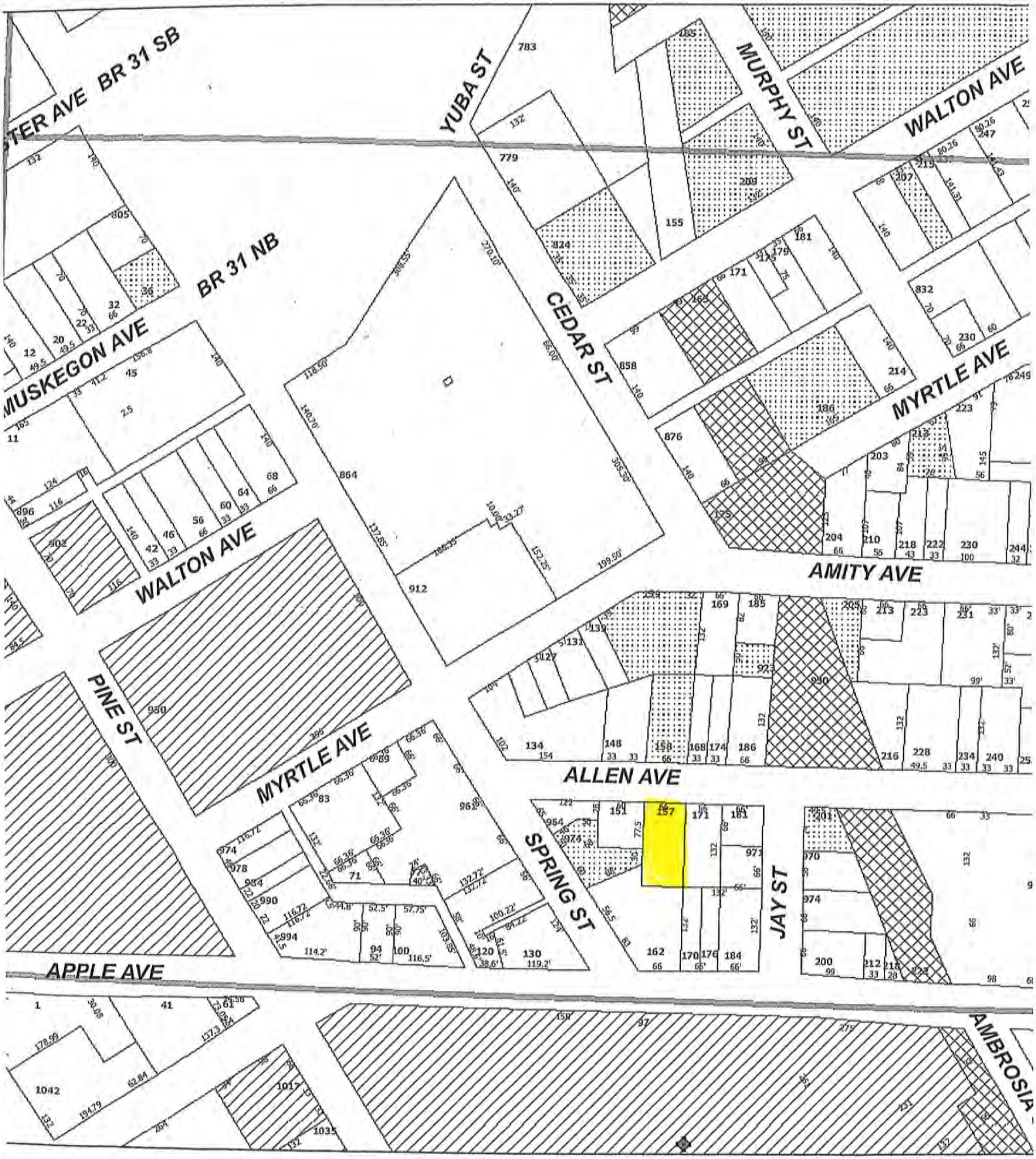
Subscribed and sworn to before me this

______________________________

Notary Public, Muskegon County, MI

Inspections Dept. 933 Terrace St., Ste 201, Muskegon, MI 49440 • 231-724-6766

NORTH ADJACENT PAGE K-6




SOUTH ADJACENT PAGE K-8

## DB - RESIDENTIAL ALLEnforcement | EN1806974

Property Information

| | |
|---|---|
| 24-205-215-0003-00 | 157 ALLEN AVE<br>MUSKEGON MI, 49442 |

Name Information

| | | | |
|---|---|---|---|
| Owner: | COUNTY OF MUSKEGON TREASURER | Phone: | |
| Address: | 173 E APPLE AVE STE 104 | Mobile | |
| City: | MUSKEGON MI 49442 | | |
| Occupant: | | Phone: | |

Enforcement Information

**Date Filed:** 12/14/2018 **Date Closed:** **Status:** Letter Sent

**Complaint:**

**Last Action Date:** **Last Inspection:** 12/20/2018

**Last Action:**

**Next Action Date:**

**Complaint Closed? YES______NO______SIGNATURE________________________________________**

POST 10 DAY NOTICE Inspection | Lance Bonifield

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Complied |
| Scheduled: | 12/20/2018 | Completed | 12/20/2018 |

**SAFEbuilt Code Enforcement Dept.**
**933 Terrace St., Muskegon, MI 49440**
**231-724-6766**

Case

# 2.

## EN1806974 – 157 Allen Ave

Muskegon County Treasurer
173 E. Apple Ave suite 104
Muskegon, MI 49442

**Information:**

This is a two-story single-family rental unit Has a tree sitting on house

**Notice & Order:**

10-day notice was sent certified mail

**Contact with Muskegon County Treasurer:**

The Muskegon County treasurer gave consent to the City of Muskegon to complete the demolition of the structure.

**Additional Information:**

- This a 2 story, single-family unit (tax foreclosure 2017)
- Staff estimates cost to repair at $75,000
- The home is located in the Angell Neighborhood

Lance Bonifield, Inspector

Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code

<u>SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)</u>

If an unsafe condition is found, the building official shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the building official acceptance or rejection of the terms of the order.

## INSPECTION REPORTS

**Owner** County of Muskegon Treasurer
173 E APPLE AVE STE 104
MUSKEGON, MI 49442

**Enforcement # EN1806974**

**Property Address:** 157 Allen

**Parcel#** 24-205-215-0003-00

**Date completed:** December 17, 2018 (Exterior Inspection)

**Deficiencies:**

1) There is a tree laying on top of house
2) Roof framing appears to be rotten/ failing
3) Foundation mortar crumbling/failing
4) Peeling paint at foundation/roof fascia
5) Roof fascia is rotten at several locations at roof/ wall intersection
6) House has boarded up door & window

**Note: This was an Exterior Inspection only.**

<u>SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)</u>

If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.

# PHOTOS of 157 Allen




**COMMISSION MEETING DATE:**

**TO:** Honorable Mayor and Commissioners

**FROM:** Jeffrey Lewis, Director of Public Safety

**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1713225

---

**SUMMARY OF REQUEST**: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1934 HUDSON ST** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days It is further requested that administration be directed to obtain bids for the demolition of the structure 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.

Case# & Project Address: # EN1713225DB / 1934 Hudson st. Muskegon MI.

Location and ownership: This structure is located on Hudson st. between Windsor Ave. and Young Ave. and is owned by DEMPSEY ROBERT E/DIANE L.

Staff Correspondence: A dangerous building inspection was conducted on 7-25-2017. The Notice and Order to Repair was issued on 7-5-2017,11-5-2018.
On 1-3-2019 the HBA declared the structure substandard and dangerous.

**Financial Impact**: CDBG Funds

**Budget action required**: None

**State Equalized value**: $16,300.00 (Entire property)

**Estimated cost to repair**: $45000.00

**Staff Recommendation**: To concur with the Housing Board of Appeals decision to demolish.

Additional Information (History):

Owner Contact:
See BS&A

Permits obtained:
PB180123 Issued 3-1-2018 – Expired 10-30-2018
No inspections

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.


SOUTH ADJACENT PAGE H-6

## DB - RESIDENTIAL ALLEnforcement | EN1713225

Property Information

24-175-000-0080-00 1934 HUDSON ST
MUSKEGON MI, 49441

Name Information

| | | | |
|---|---|---|---|
| Owner: | DEMPSEY ROBERT E/DIANE L | Phone: | (231) 773 8776 |
| Address: | 310 VASHTI LN | Mobile | (231) 672 6783 |
| City: | MUSKEGON MI 49442 | | bedmx4@yahoo.com |
| Occupant: | | Phone: | |

Enforcement Information

**Date Filed:** 07/05/2017 **Date Closed:** **Status:** DB6-Building Permit Issued

**Complaint:**

1) 2017 Summer Taxes are past due to the City Treasurer - If they remain unpaid on 3/31/2018; then they transfer to County Treasurer. The City Treasurer adds interest to these each month.
2) 2017 Winter Taxes are due to the City Treasurer 2/14/2018 & interest will start the next day if they remain unpaid to them. If unpaid as of 3/31/2018; they are also transfered to the County Treasurer.
3) There are Civil Infraction tickets for failure to register VB under EN1708575.--Robert requested informal hearing on 2nd, 3rd, & 4th CI's for the VB. The 1st was under his wife's name. Hearing is 3/19/18 @ 1:30 p.m. HM

**Last Action Date:** 03/01/2018 **Last Inspection:** 12/20/2018

**Last Action:**

**Next Action Date:**

**Complaint Closed? YES______NO______ SIGNATURE________________________________________**

DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Scheduled | Result: | |
| Scheduled: | 01/09/2019 | Completed | |

POST 10 DAY NOTICE Inspection | Lance Bonifield

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Complied |
| Scheduled: | 12/20/2018 | Completed | 12/20/2018 |

HBA HEARING Inspection | Lance Bonifield

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | No Change |
| Scheduled: | 12/06/2018 | Completed | 12/07/2018 |

POST 10 DAY NOTICE Inspection | BLAKE ZENOBIA

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 11/26/2018 | Completed | 11/27/2018 |

POST 30 DAY N & O Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 11/06/2018 | Completed | 11/06/2018 |

DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Not Complied |
| Scheduled: | 10/30/2018 | Completed | 11/02/2018 |

POST 10 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 02/20/2018
Result: Partially Complied
Completed 02/21/2018

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 01/25/2018
Result: Partially Complied
Completed 01/25/2018

CC HEARING Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 01/23/2018
Result: Partially Complied
Completed 01/24/2018

POST CC HEARING Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 01/12/2018
Result: Partially Complied
Completed 01/12/2018

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 12/11/2017
Result: Partially Complied
Completed 12/11/2017

HBA HEARING Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 12/07/2017
Result: Partially Complied
Completed 12/08/2017

POST 10 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 11/22/2017
Result: Partially Complied
Completed 11/22/2017

TICKET ISSUED Inspection | Jay Paulson (231) 724-3900

Status: Canceled
Scheduled: 11/20/2017
Result: Canceled
Completed 11/20/2017

TICKET ISSUED Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 11/06/2017
Result: Not Complied
Completed 11/06/2017

**Comments**

Complaint Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 10/23/2017
Result: Not Complied
Completed 10/23/2017

TICKET ISSUED Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Not Complied
Scheduled: 10/23/2017 | Completed 10/23/2017

**Comments**

IPMC 108 fail to remove steps in front of home

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 10/09/2017 | Completed 10/10/2017

HBA HEARING Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 10/05/2017 | Completed 10/06/2017

DB Interior Inspection Inspection | Kirk Briggs

Status: Completed | Result: Partially Complied
Scheduled: 10/05/2017 | Completed 10/05/2017

DB Interior Inspection Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 10/05/2017 | Completed 10/05/2017

POST 10 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 09/25/2017 | Completed 09/25/2017

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 09/11/2017 | Completed 09/11/2017

HBA HEARING Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 09/07/2017 | Completed 09/08/2017

POST 10 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 08/28/2017 | Completed 08/29/2017

DB Interior Inspection Inspection | Jay Paulson (231) 724-3900

Status: Canceled | Result: Canceled
Scheduled: 08/07/2017 | Completed 08/07/2017

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

Status: Completed | Result: Partially Complied
Scheduled: 08/04/2017 | Completed 08/04/2017

| HBA HEARING Inspection \| Jay Paulson (231) 724-3900 | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 08/03/2017 | Completed | 08/04/2017 |

| POST 10 DAY NOTICE Inspection \| Jay Paulson (231) 724-3900 | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 07/24/2017 | Completed | 07/24/2017 |

| POST 30 DAY N & O Inspection \| Jay Paulson (231) 724-3900 | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 07/06/2017 | Completed | 07/06/2017 |


**SAFEbuilt Code Enforcement Dept.**
**933 Terrace St., Muskegon, MI 49440**
**231-724-6766**

A.

## EN1713225 – 1934 Hudson St

## Robert & Diane Dempsey, 310 Vashti Ln, Muskegon, MI 49442

1) A complaint was received regarding the condition of the home (in 2017)
2) Property taxes are current
3) 2017 SEV $12,100 Estimated cost to repair is $19,300
4) This property is in the Campbell neighborhood
5) 1 story home, 744 sqft of living space
6) Home shows vacant since April of 2015 (no water usage)
7) Nine (11) enforcement actions for long grass and trash from 2014 to 2018
8) Building permit obtained on March 1, 2018
9) Building permit expired on October 30, 2018. No inspections were scheduled and site inspection show no work has been completed

Action since August 3, 2017 HBA meeting: Owner did schedule an interior inspection for August 8, 2017 but canceled due to illness. No further contact with owner.

Action since September 5, 2017 HBA meeting: 10-4-17, owner wanted a permit to side the home. The owner was advised he must have an interior inspection and pay the outstanding City fees. Owner paid for his fees and scheduled the interior inspection for 11am today. Owner was advised he must provide a plan of abatement for EACH listed violation. The inspection report was sent to the owner at 1444 hours today via email. Owner advised at the inspection he might not show for the HBA hearing tonight.

Action since the October 5, 2017 HBA meeting: The HBA granted the owner 60 days to provide a plan of abatement with a reasonable timetable for completion, obtain the necessary permits to begin the plan of abatement. The owner must report back to the HBA at the December 7, 2017 on his progress.

On October 10, 2017, a neighbor called and advised the owner placed a used deck on the front of the home. The owner was given notice to remove the deck. The owner received two citations before the deck was removed.

November 2, 2017 HBA meeting: Neighbors testified to the HBA board regarding the condition of the home and displeasure with the progress with the repairs.

December 7, 2017 HBA meeting: HBA declared the home as dangerous

January 23, 2018 City Commission meeting: Owner request more time to submit plans to repair the home as his wife has been hospitalized with a liver transplant. CC referred the case back to the HBA. I meet with owner after the CC meeting and gave him example plans of abatement, permit application, deck building information and handrail requirements.

January 25, 2018: The owner was mailed and emailed the CC resolution information including a due date of no later than February 23, 2018 to have an approved plan of abatement and permits issued.
February 12, 2018: No contact with the owner since the CC meeting, I sent an email reminding the owner of the deadline for his plans and permits.
February 27, 2018: Owner came into the office with his plan of abatement. His plan was given to the Building Official for review. The BO approved the his plan with the reminder the owner must pay all outstanding fees, fines, taxes and register the home with the Vacant Building Dept.
February 28, 2018: I was unable to contact the owner as his voice mail boxes are full and I was not able to leave a message. At approx. 4:53pm the owner called he was informed his plan was approved but he must pay all fees, fines, taxes and register the home as a vacant building before the permit(s) can be issued.
March 1, 2018: Building permit issued with a value of $19,676

## INSPECTION REPORT

**Enforcement # EN1713225**
**Property Address:** 1934 HUDSON ST
**Parcel #** 24-175-000-0080-00

**Date completed:** July 5, 2017

**DEFICENCIES: Exterior Only**

1. **Siding is rotted, missing and has peeling paint in numerous locations**
2. **Windows are broken or missing**
3. **Windows have rotted sills, sashes and peeling paint**
4. **Roof is deteriorated and must be replaced**
5. **Soffits and fascia are rotted, have peeling paint or missing**
6. **Foundation has cracks. Foundation entry door is missing (currently boarded close)**
7. **Front entry cement steps have large cracks and sections are missing**
8. **Light globe is missing on rear entry door**
9. **Gas & electrical meters are currently attached to the home**
10. **Nine "enforcement" actions for trash, long grass or brush since 2014**
11. **Vacant since April of 2015**

**Date completed:** October 5, 2017

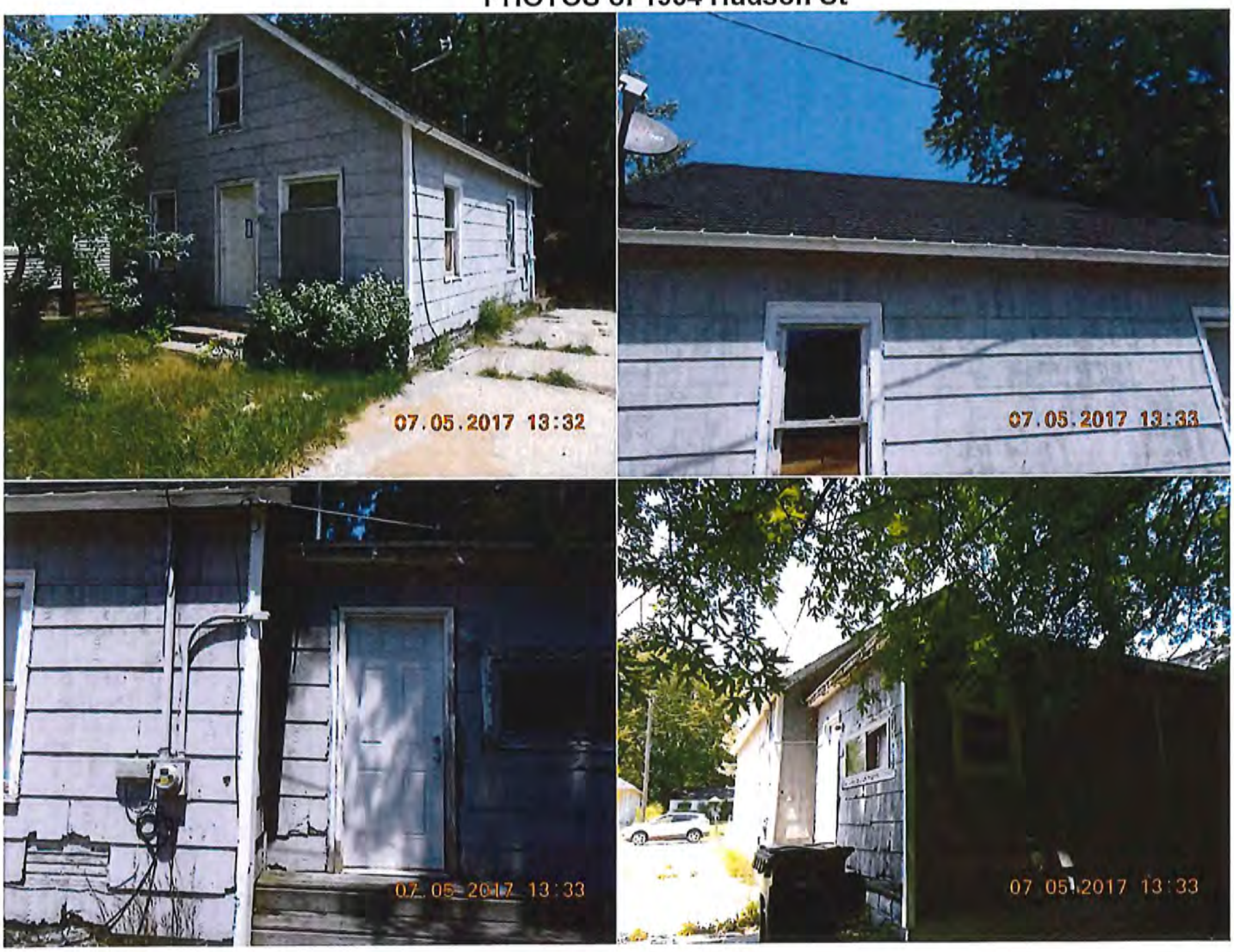
**DEFICENCIES: Interior Only**

1. **Electrical panel cover is missing**
2. **Front and rear entry steps must be replaced with approved handrails**
3. **Foundation cracks & openings must be sealed**
4. **Unable to determine the condition of the furnace. Furnace must be inspected by a licensed contractor and certified safe & operational**
5. **Drywall missing throughout the home and must be replaced. Insulation in the exterior walls and ceiling must be replaced where drywall is missing**
6. **Hardwired smoke detectors must be installed in locations as prescribed by code**
7. **Current bedroom windows do not meeting egress size requirements. All new windows**

must be installed to meet energy, building and fire egress requirements

8. All damaged interior doors must be replaced
9. The stairway to upper bedroom(s) are too steep as this area was not designed to be a sleeping area. Steps must be replaced to code or upstairs and cannot be designated for sleeping
10. The upper stairway will need a handrail
11. Bathroom needs new flooring, drywall, plumbing repairs, sink and shower faucets
12. New paint throughout the interior of the home
13. Kitchen cabinets need repair and paint
14. The floor coverings throughout the interior must be replaced
15. Kitchen plumbing is damaged or missing

PHOTOS of 1934 Hudson St




07.05.2017 13:33


07.05.2017 13:33


07.05.2017 13:34


10.11.2017 14:30


11.08.2017 14:25

**COMMISSION MEETING DATE:**

**TO:** Honorable Mayor and Commissioners

**FROM:** Jeffrey Lewis, Director of Public Safety

**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1803212DB
**EN1806856VB**

---

**SUMMARY OF REQUEST**: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1505 6TH ST** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days It is further requested that administration be directed to obtain bids for the demolition of the structure 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.

Case# EN1803212DB / Project Address: 1505 sixth ($6^{th}$) St.

Location and ownership: This structure is located on Sixth St. between Grand Ave. and Southern Ave. and is owned by DEKOSTER MATTHEW.

Staff Correspondence: A dangerous building inspection was conducted on 7-10-2018, 11-19-2018. The Notice and Order to Repair was issued on 11-5-2018. On 1-3-2019 the HBA declared the structure substandard and dangerous.

**Financial Impact**: CDBG Funds

**Budget action required**: None

**State Equalized value**: $ 25,900.00 (Entire property)

**Estimated cost to repair**: $60,000.00

**Staff Recommendation**: To concur with the Housing Board of Appeals decision to demolish.

Owner Contact:
See BS&A

Permits obtained:
PB180689- expired / closed 9-20-2018
PM180455 issued - expires 1-27-2019
PE180615 issued - expires 1-27-2019

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

**DB - RESIDENTIAL ALLEnforcement | EN1803212**

Property Information

24-205-419-0017-00    1505 6TH ST
MUSKEGON MI, 49441

Name Information

Owner: DEKOSTER MATTHEW    Phone: (616) 566 9166
Address: 4961 BYRON RD    Mobile (616) 566 9166
City: ZEELAND MI 49464    mdekoster618@gmail.com
Occupant:    Phone:

Enforcement Information

**Date Filed:** 06/05/2018    **Date Closed:**    **Status:** DB3a-HBA Notice

**Complaint:**

Tree has fallen on the home

**Last Action Date:**    **Last Inspection:** 11/27/2018

**Last Action:**

**Next Action Date:**

**Complaint Closed? YES_____ NO_____ SIGNATURE______________________________**

HBA HEARING Inspection | Lance Bonifield

Status: Scheduled    Result:
Scheduled: 12/06/2018    Completed

POST 10 DAY NOTICE Inspection | BLAKE ZENOBIA

Status: Completed    Result: Partially Complied
Scheduled: 11/26/2018    Completed 11/27/2018

POST 30 DAY N & O Inspection | Jay Paulson (231) 724-3900

Status: Completed    Result: Partially Complied
Scheduled: 11/06/2018    Completed 11/06/2018

POST 30 DAY N & O Inspection | Jay Paulson (231) 724-3900

Status: Canceled    Result: Canceled
Scheduled: 08/03/2018    Completed 08/03/2018

DANGEROUS BLDG Inspection | Jay Paulson (231) 724-3900

Status: Completed    Result: Partially Complied
Scheduled: 07/13/2018    Completed 07/13/2018

DANGEROUS BLDG Inspection | Kirk Briggs

Status: Completed    Result: Partially Complied
Scheduled: 07/13/2018    Completed 07/13/2018

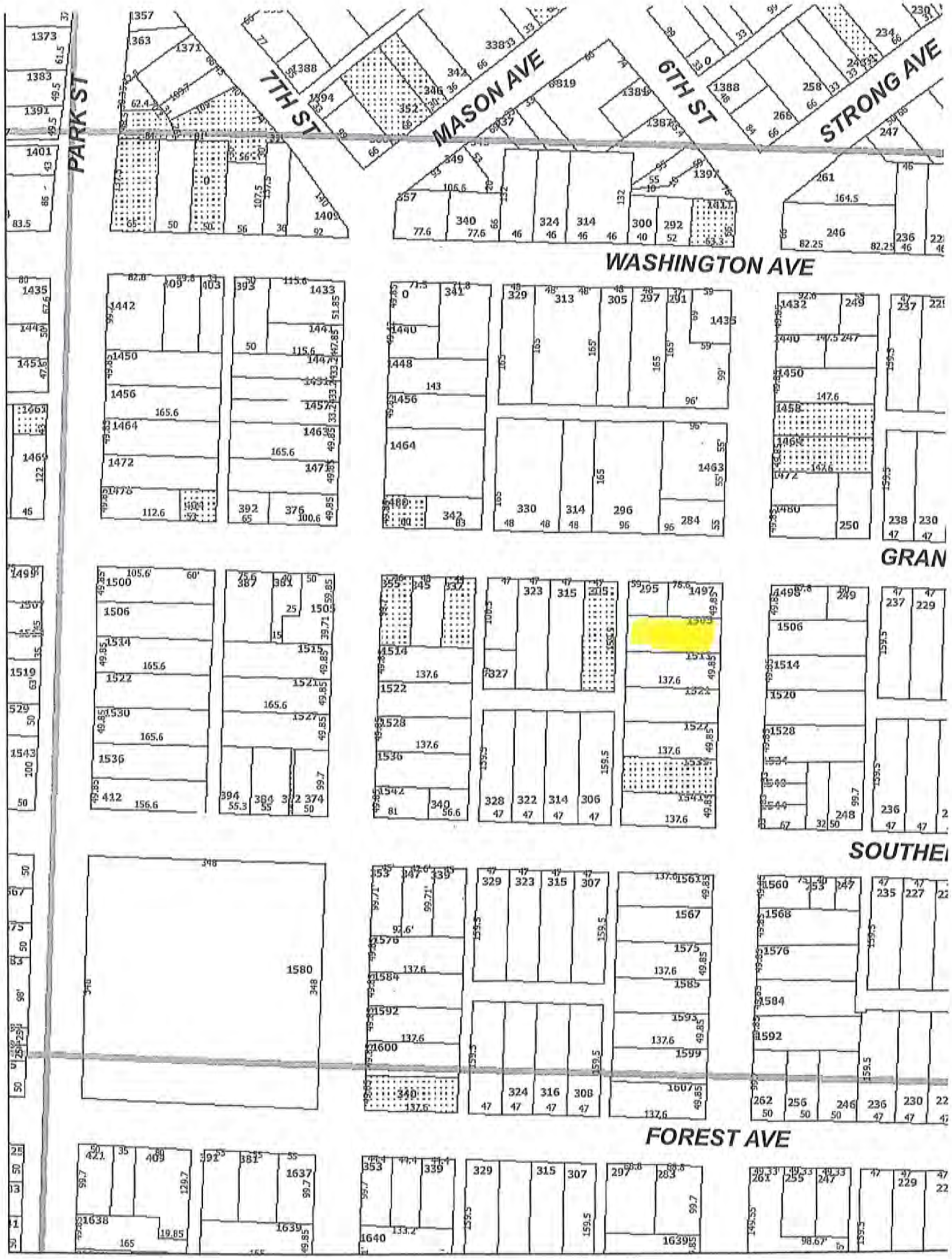
DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

Status: Completed    Result: Not Complied
Scheduled: 07/10/2018    Completed 07/10/2018

**SAFEbuilt Code Enforcement Dept.**
**933 Terrace St., Muskegon, MI 49440**
**231-724-6766**

# 2018 City of Muskegon
# Environmental Inspector Ar

WEST ADJACENT PAGE I-7




**MAJOR PROPERTY OWNERS**

CITY OF MUSKEGON
MUSKEGON COUNTY
STATE OF MICHIGAN
UNITED STATES
ALL OTHER OWNERS

WATER HYDRANT

1:2,400
nch = 200 feet

EGON COUNTY
IS

ap and Book by
apping and GIS
Conjunction with
ty of Muskegon
nning Department
ojection: State Plane
3 Michigan South Zone
ta: Muskegon County
apping and GIS
ate: 4/30/2018

Case

# 1.

## EN1803212 – 1505 6th Street

Matthew DeKoster
4961 Byron Rd,
Zeeland, MI 49464

**Information:**

On or around June 5, 2018, a large tree fell on the front porch of the home. Owner advised he would be removing the tree and repairing the garage himself.
On July 20, 2018, the owner obtained a building permit to repair the porch and porch deck of the home.
On November 5, 2018, a follow-up inspection showed no work had started and the clean-up was not completed. The building permit was closed and a dangerous building case was opened for the entire property.

**Complaint Notice:**

June 11, 2018, a complaint notice was sent and the owner called and stated he would be completing the repairs and clean-up of the property himself.

**Notice & Order:**

On November 6, 2018, the notice & order was sent and posted.
On November 26, 2018, a ten day notice was sent and posted for the August 2, 2018 HBA hearing.
All notices are sent First Class and Certified Mail and posted on the property in question.

**Contact with Owner:**

On September 24, 2018, the owner was contacted by Inspector Legard regarding the status of the repairs. Owner advised he would be submitting new plans to completely remove the front porch.
No further contact from the owner

**Additional Information:**

- This a 1 ½ -story, 1,496 sqft two unit rental dwelling with a detached garage
- Property taxes are delinquent for 2016 & 2017
- 2018 SEV $22,500
- Staff estimates cost to repair at $21,900
- 15 enforcement actions since 2016 for trash, brush, and tall grass
- The structure is located in the Nelson Neighborhood

# DANGEROUS BUILDING INSPECTION REPORT

**Owner** DEKOSTER MATTHEW
4961 BYRON RD
ZEELAND, MI 49464

**Enforcement # EN1803212**
**Property Address:** 1505 6TH ST
**Parcel #** 24-205-419-0017-00

**Date completed:** 7-10-2018 & 11-19-2018

## DEFICENCIES:

NOTE: This home was damaged as a result of a large tree falling the front porch.

1. Front porch must be replaced where tree made contact
2. Front porch railing, decking and porch components must be replaced
3. Front step must have hand railings on both sides of steps
4. Tree debris, stump and damaged housing materials must be removed from property
5. House siding is missing
6. Soffits, fascia and eves are missing, rotted or damaged
7. House roof has missing shingles (not related to tree damage)
8. Television antenna is damaged and must be removed from roof
9. Tree limb must be removed from electrical service wire near the mast
10. Front entry door is missing
11. Garage roof must be replaced (new shingles have been placed over deteriorated shingles which must be removed first)
12. Garage fascia is rotted
13. Garage windows are broken or missing. Windows must be replaced or boarded closed. Boarded areas must be painted to match siding or trim colors
    See rental inspection for additional violations

Jay Paulson, Inspector

**Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.**

**SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)**
If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.
RENTAL DWELLING INSPECTION REPORT

VIOLATIONS FOR: 1505 6TH ST
Current Occupancy 3-20-2017 2 Units, Lower-vacant, Upper-Occupied

Inspection History 3-20-2017 Original Inspection, 7-13-2018 re-inspection (not complete)

APT 1(Lower)

1) Basement Furnace(s) needs an inspection by a mechanical contractor and must be certified safe, properly installed, code compliant, and a Parts per Million report must be enclosed. A signed certificate with contractor license number affixed, may be faxed to SAFEbuilt at (231) 728-4371. 10-404

2) Basement Water heater needs an inspection by a licensed contractor and must be certified safe, properly installed, code compliant, and a Parts per Million report must be enclosed. A signed certificate with contractor license number affixed, may be faxed to SAFEbuilt at (231) 728-4371.

3) Basement Laundry area GFI RECEPTACLES REQUIRED WITHIN 6 FT OF WATER, SINKS, TUBS OR LAUNDRY TUBS

4) Basement Dryer vent pipe cannot be plastic

5) Basement: Broken light with open wire near entry to basement

6) Rear Entry Door does not fit tight - - install weather seal. Needs hole plugged

7) Rear Porch Light in closet under stairs broken

8) Rear Porch Seal steps and floor

9) Kitchen Sink leaks at faucet

10) Kitchen Seal floor of sink base cabinet

11) Kitchen Caulk/seal around sink and countertop

12) Kitchen Repair/replace cabinet doors/drawers

13) Kitchen Repair / replace floor tiles

14) Entire House Patch, clean, scrape and paint Walls, ceilings and seal floors

15) Entire House Repair / replace broken and missing switch and outlet covers

16) Bath Wall tiles or loose. Inside tub

17) Bath Recaulk/reseal in and around tub

18) Bath Repair / replace floor tiles

19) Bath Ceiling tiles missing

20) Bath Wiring above bath ceiling needs repaired. ALSO NEEDS ELECTRICAL PERMIT

21) Bath: Bath exhaust fan must vent to outside house

22) Living Room Light fixture globe is broken or missing.

23) Rear Bedroom Light fixture does not work.

24) Rear Bedroom Window Broken

25) Rear Bedroom doesn't have a smoke detector as required by code at the entrance of the bedroom. Anytime a smoke detector must be replaced or the inspector finds a defective, outdated or missing detector, the new smoke detector must have a sealed-in Lithium battery supply; no battery replacement required over the 10 year life of the detector.

26) Front Bedroom doesn't have a smoke detector as required by code at the entrance of the bedroom. Anytime a smoke detector must be replaced or the inspector finds a defective, outdated or missing detector, the new smoke detector must have a sealed-in Lithium battery supply; no battery replacement required over the 10 year life of the detector.

27) Front Bedroom Light fixture does not work.

28) Hallway Light fixture does not work or is loose. Light fixture globe is broken or missing.

29) Hallway doesn't have a smoke detector as required by code at the entrance of the bedroom. Anytime a smoke detector must be replaced or the inspector finds a defective, outdated or missing detector, the new smoke detector must have a sealed-in Lithium battery supply; no battery replacement required over the 10 year life of the detector.

30) Front Entry Exterior door and glass broken

APT 2

31) Front Stair Entry Bolt lock only not permitted. Handle must be operable from egress side.1010.1.9.4

32) Front Stairs: Extension cord thru wall at bottom of stairs

33) Front Stairs: Steps need sealed. Banister post missing cap. Spindles missing or broken

34) Entire Unit Seal Floors. Repair or replace floor tiles including steps and porches

35) Front Bedroom Ceiling tiles broken

36) Front Bedroom Door broken

37) Front Stairs No 3-way switch at bottom of stairs for light. Light fixture globe is broken or missing.

38) Bath Clean and paint walls

39) Bath Toilet is loose at floor

40) Bath Tub needs to be cleaned, remove mildew, repair cracks in tub surround. Re-caulk seams and edges

41) Kitchen Scrape, patch and paint walls and ceiling

42) Kitchen Light fixture globe is broken or missing.

43) Kitchen Outlet covers missing

44) Bedroom: Grounded outlets not grounded

45) Bedroom Patch and paint walls

46) Living Room Ceiling tiles stained. Possible leak

47) Entire Unit Install Smoke Detectors to code in bedrooms, outside bedrooms (except in kitchen) and tops of stairways and basement. Anytime a smoke detector must be replaced or the inspector finds a defective, outdated or missing detector, the new smoke detector must have a sealed-in Lithium battery supply; no battery replacement required over the 10 year life of the detector.

48) Rear Porch Repair broken windows

49) Exterior Scrape and paint to match trim and siding. NOTE: You may have until June 30 (following this inspection) to complete violation

50) Exterior Repair and seal front porch floor

51) Exterior Multiple holes in side of house allowing birds and animals entry

52) Exterior Roof has loose shingles and moss growing. Clean and repair. NOTE: You may have until June 30 (following this inspection) to complete violation

53) Exterior Fascia and roof rotted on driveway side

54) Exterior Screens missing. Operable window(s) does/do not have a screen - - must cover the complete bottom sash from April 30th thru September 30th.

55) Exterior Block missing from foundation; Patch or replace

56) Exterior Overhead wires from house to garage cut and hanging open, disconnect and remove

57) Garage: Garage was not accessible at time of inspection. Exterior doors, windows and paint need repair

10-352 (A) RENTING DWELLING WITHOUT CERTIFICATE OF 10-352 (A) RENTING DWELLING WITHOUT CERTIFICATE OF COMPLIANCE

10-351 (A) FAILED TO REGISTER A RENTAL 10-351 (A) FAILED TO REGISTER A RENTAL DWELLING

10-351 (A) FAILED TO REGISTER A RENTAL 10-351 (A) FAILED TO REGISTER A RENTAL DWELLING

10-351 (A) FAILED TO REGISTER A RENTAL 10-351 (A) FAILED TO REGISTER A RENTAL DWELLING

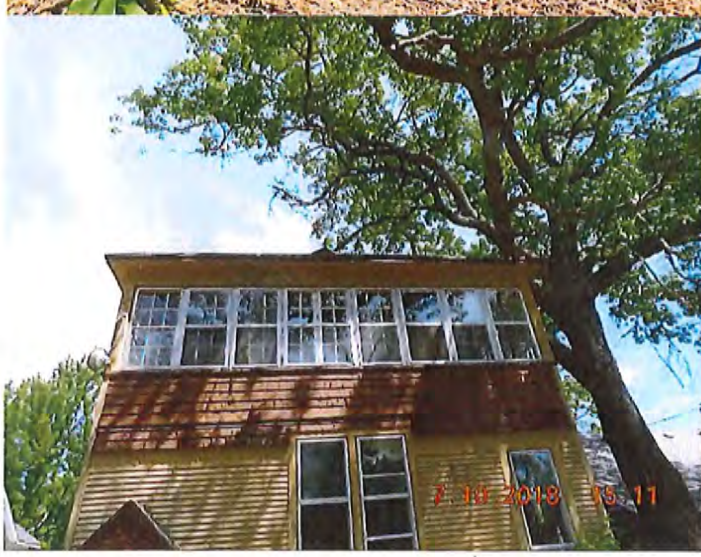
10-351 (A) FAILED TO REGISTER A RENTAL 10-351 (A) FAILED TO REGISTER A RENTAL DWELLING

## PHOTOS of 1505 6th Street


7.10.2018 15:09


7-10-2018 15:10


7.10.2018 15:10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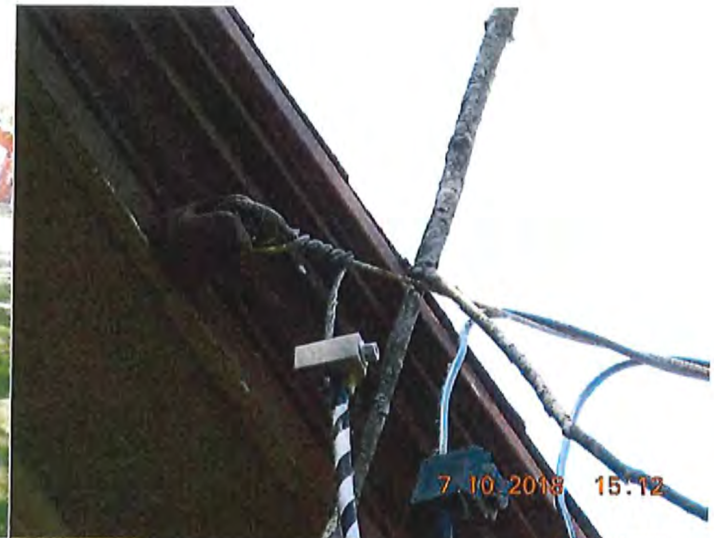
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7.10.2018 15:13


11 19 2018 15:09


11 19 2018 15:10


11 19 2018 15:10


11 19 2018 15:11


11 19 2018 15:11

**COMMISSION MEETING DATE: 1-22-2019**

**TO:** Honorable Mayor and Commissioners

**FROM:** Jeffrey Lewis, Director of Public Safety

**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1806617DB

---

**SUMMARY OF REQUEST**: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **1853 SANFORD ST** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days It is further requested that administration be directed to obtain bids for the demolition of the structure 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.

Case# EN1806617DB Project Address: 1853 Sanford St. Muskegon MI.

Location and ownership: This structure is located on Sanford St. between Jefferson St. and Peck St.( corner of Sanford St. / Alpha Ave.) and is owned by HUBBELL LAURA LEE.

Staff Correspondence: A dangerous building inspection was conducted on 10-17-2018. The Notice and Order to Repair was issued on 12-21-2018.
On 1-3-2019 the HBA declared the structure substandard and dangerous.

**Financial Impact**: CDBG Funds

**Budget action required**: None

**State Equalized value**: $ 21,700.00(Entire property)

**Estimated cost to repair**: $60,000 ( Exterior )

**Staff Recommendation**: To concur with the Housing Board of Appeals decision to demolish.

Additional Information (History):

Owner Contact: none

Permits obtained:
No permits since 2017

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

CITY OF MUSKEGON BUILDING DEPT.

## DANGEROUS BUILDING INSPECTION REPORT

**Owner** HUBBELL LAURA LEE
1853 SANFORD ST
MUSKEGON, MI 49441

**Enforcement # EN1806617**
**Property Address:** 1853 SANFORD ST
**Parcel #** 24-232-006-0007-00

**Date completed:** October 8, 2018

**DEFICENCIES:**

1. Several windows are broken out, cracked or missing
2. Window trim is rotted out on several windows
3. Boarded windows must be painted white or must match window siding or trim
4. Basement windows are broken out and not properly boarded closed
5. Wood siding is rotted, missing or not attached correctly
6. Wood siding has peeling paint. Peeling paint must be scraped and siding repainted with an exterior grade paint
7. Fascia and soffits are rotted, missing or not attached
8. Front porch deck has collapsed
9. Front porch skirting is not attached, rotted or missing
10. Front porch steps are rotted and must be replaced
11. Front porch steps are missing handrails
12. Debris, garbage and other items on front porch must be removed
13. A large amount old furniture and other debris must be removed from the yard
14. Roof shingles are missing, rotted or not attached correctly. On one section of the roof has a blue tarp which is a violation of City Code
15. Detached garage: Wood siding is rotted, missing or not attached
16. Detached garage: Wood siding has peeling paint that must be scraped and repainted with an exterior grade paint
17. Detached garage: Service door is rotted and must be replaced
18. Detached garage: Roof has a large amount of moss that must be removed to determine the condition

NOTE: This depicts an exterior inspection only. A complete interior inspection must be completed

Jay Paulson, Inspector

**Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code.**

## DB - RESIDENTIAL ALLEnforcement | EN1806617

Property Information

24-232-006-0007-00 1853 SANFORD ST
MUSKEGON MI, 49441

Name Information

Owner: HUBBELL LAURA LEE
Address: 1853 SANFORD ST
City: MUSKEGON MI 49441
Occupant:

Phone: (231) 799 5908
Mobile (231) 246 6489
Phone:

Enforcement Information

**Date Filed:** 10/17/2018 **Date Closed:** **Status:** DB2b-Notice/Order Sent

**Complaint:**

**Last Action Date:** **Last Inspection:** 12/21/2018

**Last Action:**

**Next Action Date:**

**Complaint Closed? YES______NO______SIGNATURE________________________________________**

POST 30 DAY N & O Inspection | Lance Bonifield

Status: Scheduled
Scheduled: 01/04/2019

Result:
Completed

DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 12/05/2018

Result: Not Complied
Completed 12/21/2018

DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

Status: Completed
Scheduled: 10/31/2018

Result: Not Complied
Completed 10/31/2018

**SAFEbuilt Code Enforcement Dept.**
**933 Terrace St., Muskegon, MI 49440**
**231-724-6766**

NORTH ADJACENT PAGE J-11


SOUTH ADJACENT PAGE N/A

## DB - RESIDENTIAL ALLEnforcement | EN1806617

Property Information

24-232-006-0007-00    1853 SANFORD ST
MUSKEGON MI, 49441

Name Information

Owner: HUBBELL LAURA LEE    Phone: (231) 799 5908
Address: 1853 SANFORD ST    Mobile (231) 246 6489
City: MUSKEGON MI 49441
Occupant:    Phone:

Enforcement Information

**Date Filed:** 10/17/2018    **Date Closed:**    **Status:** DB2b-Notice/Order Sent
**Complaint:**

**Last Action Date:**    **Last Inspection:** 12/21/2018
**Last Action:**
**Next Action Date:**
**Complaint Closed? YES______NO______ SIGNATURE________________________________________**

POST 30 DAY N & O Inspection | Jay Paulson (231) 724-3900

Status: Scheduled    Result:
Scheduled: 01/04/2019    Completed

DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

Status: Completed    Result: Not Complied
Scheduled: 12/05/2018    Completed 12/21/2018

DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

Status: Completed    Result: Not Complied
Scheduled: 10/31/2018    Completed 10/31/2018

**SAFEbuilt Code Enforcement Dept.**
**933 Terrace St., Muskegon, MI 49440**
**231-724-6766**


10.8.2018 14:08


10.8.2018 14:08


10.8.2018 14:09


10.8.2018 14:09


10.8.2018 14:09


10.8.2018 14:09


10.8.2018 14:10


1853
10.8.2018 14:10


1853
YARD WASTE
10.8.2018 14:10


1853
BEWARE of DOG
dish HD
10.8.2018 14:10


10.8.2018 14:10


10.8.2018 14:10


VACANT!
10.8.2018 14:11

**COMMISSION MEETING DATE: 1-22-2019**

**TO:** Honorable Mayor and Commissioners

**FROM:** Jeffrey Lewis, Director of Public Safety

**RE:** Concurrence with the Housing Board of Appeals Notice and Order to Demolish. Dangerous Building Case #: EN1804027

---

**SUMMARY OF REQUEST**: This is to request that the City Commission Concur with the findings of the Housing Board of Appeals that the structure located at **2555 MORTON AVE** is unsafe, substandard, a public nuisance and that it be demolished within thirty (30) days It is further requested that administration be directed to obtain bids for the demolition of the structure 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.

Case# EN1804027DB Project Address: 2555 Morton Ave. Muskegon MI.

Location and ownership: This structure is located on Morton Ave. between Miner Ave. and Harding Ave.( corner of Morton/Fountain St.) and is owned by CAREFELLE JEANE L.

Staff Correspondence: A dangerous building inspection (fire inspection ) was conducted on 7-20-2018. The Notice and Order to Repair was issued on 8-3-2018. On 1-3-2019 the HBA declared the structure substandard and dangerous.

**Financial Impact**: CDBG Funds

**Budget action required**: None

**State Equalized value**: $ 16,100.00 (Entire property)

**Estimated cost to repair**: $100,000.00

**Staff Recommendation**: To concur with the Housing Board of Appeals decision to demolish.

Additional Information (History):

Owner Contact:
See BS&A

Permits obtained:

PB181031 Issued - 10-8-2018 - expires 4-6-2019

If you disagree with the decision of the City Commission, you have the right to file a petition for superintending control in the Circuit Court for the County of Muskegon within 21 days after the City Commission concurs.

## DB - FIREEnforcement | EN1804027

Property Information

24-205-691-0001-00 2555 MORTON AVE
MUSKEGON MI, 49441

Name Information

Owner: CAREFELLE JEANE — Phone: (231) 215 8431 Mobile
Address: 2555 MORTON AVE
City: MUSKEGON MI 49441
Occupant: — Phone:

Enforcement Information

**Date Filed:** 06/25/2018 **Date Closed:** **Status:** DB2b-Notice/Order Sent
**Complaint:**

**Last Action Date:** **Last Inspection:** 11/27/2018
**Last Action:**
**Next Action Date:**
**Complaint Closed? YES_____NO_____ SIGNATURE______________________________**

DB FOLLOW-UP Inspection | Lance Bonifield

Status: Scheduled — Result:
Scheduled: 01/09/2019 — Completed

HBA HEARING Inspection | Lance Bonifield

Status: Scheduled — Result:
Scheduled: 12/06/2018 — Completed

POST 10 DAY NOTICE Inspection | BLAKE ZENOBIA

Status: Completed — Result: Partially Complied
Scheduled: 11/26/2018 — Completed 11/27/2018

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

Status: Completed — Result: Partially Complied
Scheduled: 11/05/2018 — Completed 11/05/2018

HBA HEARING Inspection | Jay Paulson (231) 724-3900

Status: Completed — Result: Partially Complied
Scheduled: 11/01/2018 — Completed 11/02/2018

POST 10 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

Status: Completed — Result: Partially Complied
Scheduled: 10/23/2018 — Completed 10/23/2018

POST 5 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

Status: Completed — Result: Partially Complied
Scheduled: 10/16/2018 — Completed 10/16/2018

POST RESOLUTION Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 09/10/2018 | Completed | 09/10/2018 |

HBA HEARING Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 09/06/2018 | Completed | 09/07/2018 |

POST 10 DAY NOTICE Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 08/24/2018 | Completed | 08/24/2018 |

DB Interior Inspection Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 08/10/2018 | Completed | 08/10/2018 |

POST 30 DAY N & O Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Partially Complied |
| Scheduled: | 08/06/2018 | Completed | 08/06/2018 |

DB - FIRE Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Not Complied |
| Scheduled: | 08/03/2018 | Completed | 08/02/2018 |

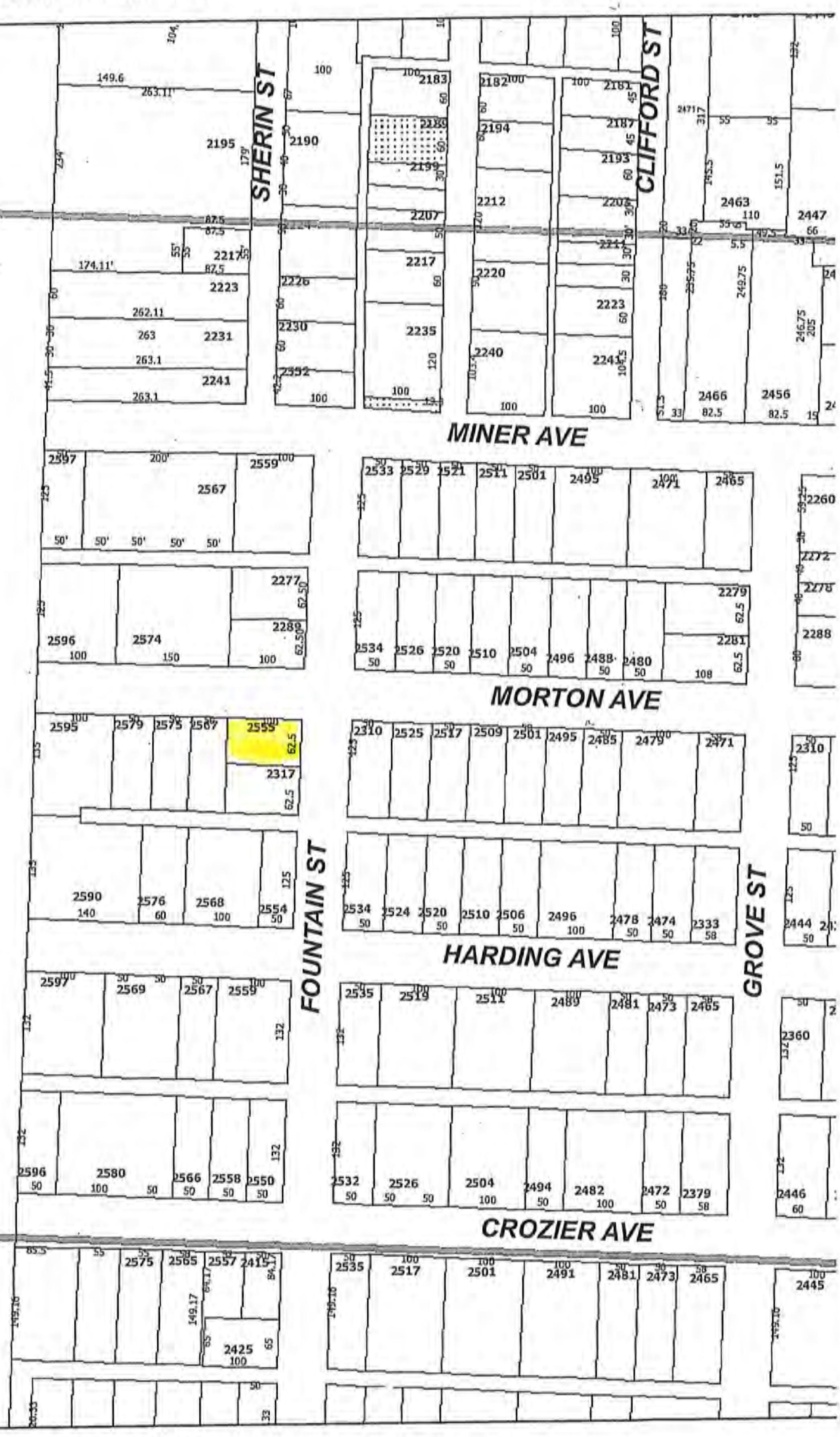
DB FOLLOW-UP Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Not Complied |
| Scheduled: | 07/20/2018 | Completed | 07/20/2018 |

DANGEROUS BLDG Inspection | Jay Paulson (231) 724-3900

| | | | |
|---|---|---|---|
| Status: | Completed | Result: | Not Complied |
| Scheduled: | 06/28/2018 | Completed | 06/29/2018 |

NORTH ADJACENT PAGE CD-1




SOUTH ADJACENT PAGE D-4

Case

# EN1804027 – 2555 Morton Ave

C.

Jeane L. Carefelle
2555 Morton Ave
Muskegon, MI 49441

**Information:**

A structure fire occurred on June 25, 2018 at approx. 12:04am. On arrival, fire crews found the semi-attached garage fully involved. The garage was connected to the house with a small covered breezeway. Fire had spread to the house and neighboring structures as well. The home sustained heavy smoke, fire and water damage. The origin of the fire was determined to be in the area of the garage and the cause of the fire is undetermined.

**Notice & Order:**

A notice to request an inspection of the structure was sent on July 20, 2018.
An inspection was completed on August 10, 2018.
The Notice & Order was sent and posted on August 6, 2018.
A ten day notice was sent and posted on August 27, 2018.
A ten day notice was sent and posted on October 22, 2018 (2nd HBA)
All notices are sent First Class and Certified Mail and posted on the property in question.

**Contact with Owner:**

Owner called and said he is waiting on the insurance company to settle the claim. The owner said the insurance company wanted her to use a contractor she does not like and now there is a delay getting anything completed. I informed the owner we have received complaints from neighbors regarding the condition of the home and the case will be placed on September's HBA agenda.

**HBA Hearing September 6, 2018**

The owner and her contractor appeared at the HBA and requested 30 days to obtain permits. Owner stated the insurance company and the contractor are close to agreement on repair costs. The HBA granted the owner 30 days to have permits in place

**Action since HBA hearing:**

Neighbors were complaining the burned out garage was not demolished.
On October 16, 2018, a 5 day demo order was sent to the owner.
On October 18, 2018, the owner called and stated the insurance check went to the mortgage company and they are not releasing the funds. The owner said she could not remove the garage until the insurance company pays out.
On October 24, 2018, an order was issued to Melching to remove the fire damaged garage and cement pad.

**HBA Hearing November 1, 2018**

On November 14, 2018, the owner called and said her mortgage company took the remaining balance of her loan from the insurance payout. With that, the owner does not have enough money to rebuild the home and she will be demolishing the home and selling the property.

**Additional Information:**

- This a 1 ½ story, 1-unit owner - occupied home
- Property taxes are current
- 2018 SEV $41,900
- Staff estimates cost to repair at $82,800
- Insurance escrow funds of $12, 508 have been received
- The home is located in the Lakeside Neighborhood

**FIRE INSPECTION REPORT**
**08/14/2018**

**Owner** CAREFELLE JEANE L
2555 MORTON AVE
MUSKEGON, MI 49441

**Property Address** 2555 MORTON AVE
**Parcel #** 24-205-691-0001-00

**Date completed:** 8/10/18

**DEFICENCIES:**

PLBG - Clean fixtures, piping looks ok. Check water heater.

MECH - Clean equipment and ducts, check equipment.

ELEC - Deficiencies

- House to be rewired to code
- Electric service to be replaced to code
- Smoke alarms to be installed to code

BUILDING – Deficiency

- All walls on west side of house to have drywall and insulation removed due to fire, smoke or water damage. Rooms to include kitchen, stairs to 2nd story, west bedroom, hallway areas, and half of upstairs.
- Replace kitchen cabinets
- Garage is total loss
- West wall to be rebuilt from foundation to roof to code
- All burn damaged wood on roof rafters, roof deck, and ridge board to be replaced
- Exterior siding, windows, house wrap, shingles, etc. to be replaced as required
- Any and all burnt or chard wood to be replaced
- All walls must be cleaned of smoke damage
- All exposed areas including walls to be sealed and primed

Garage: Garage is a total loss. The foundation must be removed and replaced before the garage structure is rebuilt.

**Based upon my recent inspection of the above property I determined that the structure meets the definition of a Dangerous Building and/or Substandard Building as set forth in Section 10-61 of the Muskegon City Code**

**SECTION 116.3 Notice (UNSAFE STRUCTURES AND EQUIPMENT)**

If an unsafe condition is found, the *building official* shall serve on the owner, agent or person in control of the structure, a written notice that describes the condition deemed unsafe and specifies the required repairs or improvements to be made to abate the unsafe condition, or that requires the unsafe structure to be demolished within a stipulated time. Such notice shall require the person thus notified to declare immediately to the *building official* acceptance or rejection of the terms of the order.

# PHOTOS of 2555 Morton Ave






8.10.2018 09:11


8.10.2018 09:12


8.10.2018 09:13


8.10.2018


8.10.2018 09:13


8.10.2018


10.26.2018 10:58


10.26.2018 10:58


10.26.2018 10:58


10.26.2018 10:58


6.28.2018 14:41

# Commission Meeting Date: January 22, 2019

Date: January 16, 2019

To: Honorable Mayor and City Commissioners

From: Planning & Economic Development

RE: Amendment to the Medical Marihuana Facilities Licensing Overlay District

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SUMMARY OF REQUEST:

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

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

Staff does not recommend approval of the amendment.

COMMITTEE RECOMMENDATION:

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

**PLANNING COMMISSION EXCERPT**

**STAFF REPORT**

**January 10, 2019**

Hearing, Case 2019-01: Request to amend Section 2330 of the zoning ordinance to include 185 W Laketon Ave into the Medical Marihuana Overlay District, by Renee Smith.

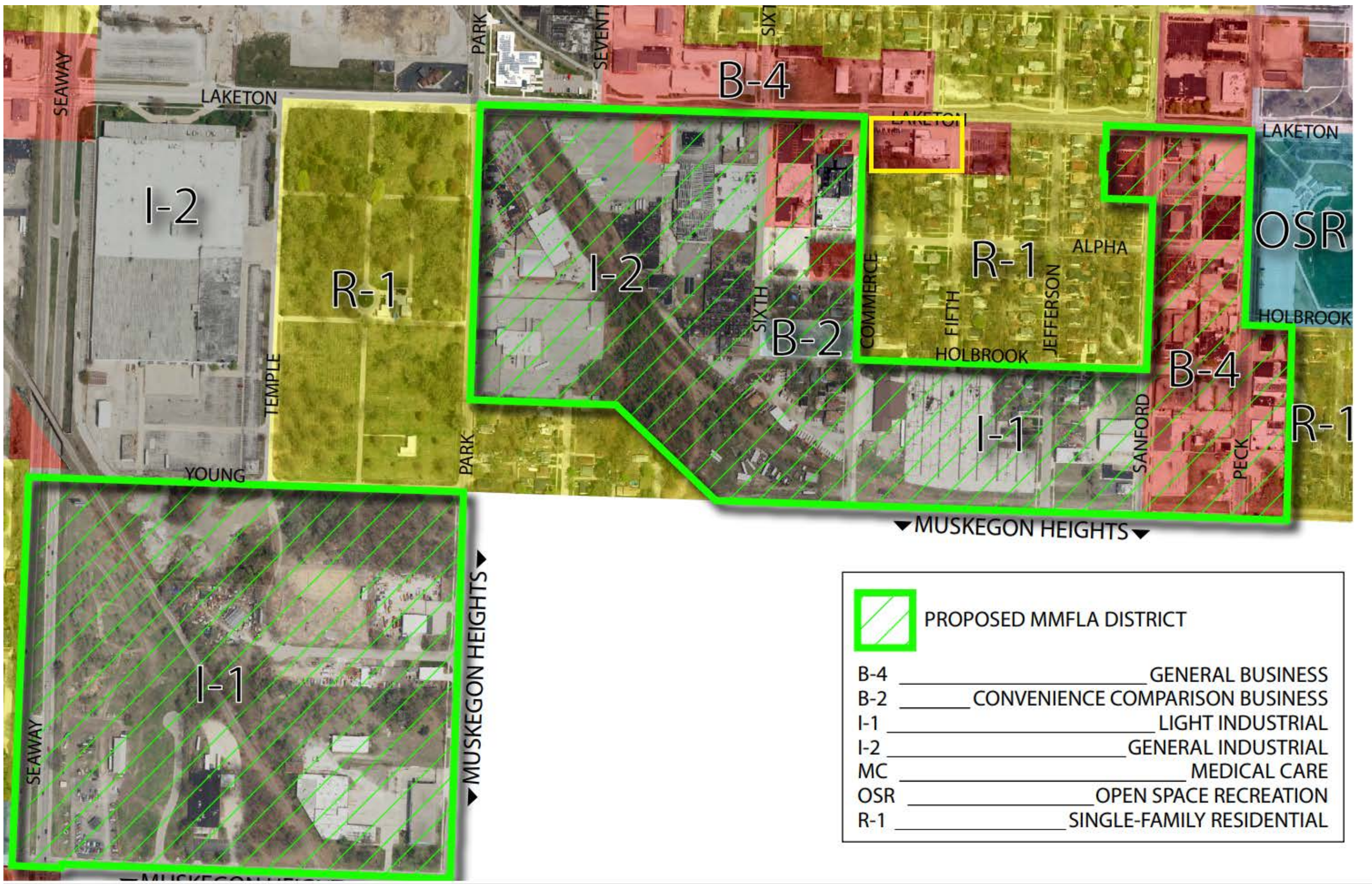
**SUMMARY**

1. The Medical Marihuana Facilities (MMFLA) Overlay District was approved on May 8, 2018.
2. Please see the MMFLA Overlay District Map on the following page. The property in discussion is highlighted in yellow.
3. To date, the City has approved 15 MMFLA licenses, most of them for Provisioning Centers (retail sales). However, none of them have been granted a State license yet.
4. The applicant would like to be included into the district because they are the only commercial building in the immediate vicinity that was excluded from the district.
5. Initial concerns over the inclusion of this property into the district included the proximity to residential homes. However, other properties within the district abut homes as well.
6. Please see the enclosed MMFLA Overlay District Ordinance.

**185 W Laketon Ave**

**MMFLA Overlay District Map**

(Proposed property at 185 W Laketon outlined in yellow)



LAKETON
SEAWAY
PARK
SEVENTH
SIXTH
TEMPLE
YOUNG
COMMERCE
FIFTH
JEFFERSON
ALPHA
HOLBROOK
SANFORD
PECK
MUSKEGON HEIGHTS
I-2
R-1
B-4
B-2
I-1
OSR
PROPOSED MMFLA DISTRICT
B-4 GENERAL BUSINESS
B-2 CONVENIENCE COMPARISON BUSINESS
I-1 LIGHT INDUSTRIAL
I-2 GENERAL INDUSTRIAL
MC MEDICAL CARE
OSR OPEN SPACE RECREATION
R-1 SINGLE-FAMILY RESIDENTIAL


132.25
185
100
150
89
36
145
37.5
37.5
75
37.5
1828
1824
37.5
1831
1832
50
1840
1841
1840
50
COMMERCE
5TH

CITY OF MUSKEGON

MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO._____

An ordinance to amend Section 2330 of the zoning ordinance to amend the Medical Marihuana Facilities Licensing Act Overlay District to include an additional parcel at 185 W Laketon Ave.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

**185 W Laketon Ave is now included in the Medical Marihuana Facilities Licensing Act Overlay District.**

This ordinance adopted:

Ayes:__________________________________________________

Nayes:__________________________________________________

Adoption Date:____________________________________

Effective Date:____________________________________

First Reading:____________________________________

Second Reading:____________________________________

CITY OF MUSKEGON

By: __________________________________
Ann Meisch, MMC, City Clerk

<u>CERTIFICATE</u>

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 22nd day of January, 2019, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: ____________________, 2019. ____________________________________________

Ann Meisch, MMC
Clerk, City of Muskegon

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

**CITY OF MUSKEGON**
**NOTICE OF ADOPTION**

Please take notice that on January 22, 2019, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2330 of the zoning ordinance to include 185 W Laketon Ave in the Medical Marihuana Facilities Licensing Act Overlay District.

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

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

Published ____________________, 2019.

CITY OF MUSKEGON

By

_________________________________

Ann Meisch, MMC
City Clerk

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PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354